

NORTH CAROLINA REGISTER



*Office of Administrative Hearings
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NORTH CAROLINA REGISTER
Publication Schedule
(January 1993 - December 1993)

Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing	Earliest Date for Adoption by Agency	Last Day to Submit to RRC	*Earliest Effective Date
*****	*****	*****	*****	*****	*****	*****
01/04/93	12/09/92	12/16/92	01/19/93	02/03/93	02/20/93	04/01/93
01/15/93	12/22/92	12/31/92	01/30/93	02/14/93	02/20/93	04/01/93
02/01/93	01/08/93	01/15/93	02/16/93	03/03/93	03/20/93	05/03/93
02/15/93	01/25/93	02/01/93	03/02/93	03/17/93	03/20/93	05/03/93
03/01/93	02/08/93	02/15/93	03/16/93	03/31/93	04/20/93	06/01/93
03/15/93	02/22/93	03/01/93	03/30/93	04/14/93	04/20/93	06/01/93
04/01/93	03/11/93	03/18/93	04/16/93	05/01/93	05/20/93	07/01/93
04/15/93	03/24/93	03/31/93	04/30/93	05/15/93	05/20/93	07/01/93
05/03/93	04/12/93	04/19/93	05/18/93	06/02/93	06/20/93	08/02/93
05/14/93	04/23/93	04/30/93	05/29/93	06/13/93	06/20/93	08/02/93
06/01/93	05/10/93	05/17/93	06/16/93	07/01/93	07/20/93	09/01/93
06/15/93	05/24/93	06/01/93	06/30/93	07/15/93	07/20/93	09/01/93
07/01/93	06/10/93	06/17/93	07/16/93	07/31/93	08/20/93	10/01/93
07/15/93	06/23/93	06/30/93	07/30/93	08/14/93	08/20/93	10/01/93
08/02/93	07/12/93	07/19/93	08/17/93	09/01/93	09/20/93	11/01/93
08/16/93	07/26/93	08/02/93	08/31/93	09/15/93	09/20/93	11/01/93
09/01/93	08/11/93	08/18/93	09/16/93	10/01/93	10/20/93	12/01/93
09/15/93	08/24/93	08/31/93	09/30/93	10/15/93	10/20/93	12/01/93
10/01/93	09/10/93	09/17/93	10/16/93	10/31/93	11/20/93	01/04/94
10/15/93	09/24/93	10/01/93	10/30/93	11/14/93	11/20/93	01/04/94
11/01/93	10/11/93	10/18/93	11/16/93	12/01/93	12/20/93	02/01/94
11/15/93	10/22/93	10/29/93	11/30/93	12/15/93	12/20/93	02/01/94
12/01/93	11/05/93	11/15/93	12/16/93	12/31/93	01/20/94	03/01/94
12/15/93	11/24/93	12/01/93	12/30/93	01/14/94	01/20/94	03/01/94

* The "Earliest Effective Date" is computed assuming that the agency follows the publication schedule above, that the Rules Review Commission approves the rule at the next calendar month meeting after submission, and that RRC delivers the rule to the Codifier of Rules five (5) business days before the 1st business day of the next calendar month.

**EXECUTIVE ORDER NUMBER 5
SEVERE WINTER STORM
EMERGENCY RELIEF**

WHEREAS, on March 15, 1993, the United States Department of Transportation declared a regional emergency justifying an exemption from 49 C.F.R. 390-399 (Federal Motor Carrier Safety Regulations) for a period of thirty days in response to the severe winter storm of March 12 and 13, 1993;

NOW THEREFORE, pursuant to N.C.G.S. 166A-6(c), the North Carolina Emergency Management Act, by the authority vested in me as Governor by the Constitution and laws of this State, and with the concurrence of the Council of State, **IT IS ORDERED:**

Section 1. The State of North Carolina, under the supervision and direction of its Department of Transportation, shall waive weight restrictions on the gross weight of vehicles transporting food, supplies, and equipment to the victims of the severe winter storm subject to the following conditions:

- (1) Vehicle weight shall not exceed the maximum gross vehicle weight criteria established by the manufacturer or 90,000 pounds gross vehicle weight, whichever is less.
- (2) Tandem axle weights shall not exceed 50,000 pounds and single axle weights shall not exceed 25,000 pounds.
- (3) The vehicles shall, upon entering the State of North Carolina, stop at the first available vehicle weight station and produce identification sufficient to establish that the load contained thereon is part of the relief effort for the severe winter storm.
- (4) This order shall not be in effect on bridges posted pursuant to N.C.G.S. 136-72.

Section 2. The vehicles described above shall be exempt from the vehicle licensing and tax requirements of N.C.G.S. 105, Subchapter 5, Article 36B (motor fuels tax).

Section 3. As a result of the 15 March 1993 declaration of regional emergency by the U.S. Department of Transportation and its corresponding exemption from 49 C.F.R. 390-399,

nonparticipants in North Carolina's International Registration Plan shall be permitted to operate in North Carolina without penalty under N.C.G.S. 20-382.

Section 4. If returning vehicles are loaded with some other backhaul, all normal weight and permit restrictions apply.

Section 5. The North Carolina Department of Transportation shall enforce the conditions set forth in Sections 1, 2, and 3 in a manner which would best accomplish the purposes of this Order without endangering motorists on North Carolina highways.

This Order is effective immediately and shall remain in effect for 30 days.

Done in the Capitol City of Raleigh, North Carolina, this the 18th day of March, 1993.

**TITLE 10 - DEPARTMENT OF
HUMAN RESOURCES**

Notice is hereby given in accordance with G.S. 150B-21.2 that the Division of Facility Services intends to amend rules cited as 10 NCAC 3R .3001 and .3020.

The proposed effective date of this action is September 1, 1993.

The public hearing will be conducted at 2:00 p.m. on June 2, 1993 at the Council Building, Room 201, 701 Barbour Drive, Raleigh, NC.

Reason for Proposed Action: To adopt as permanent rules the temporary rules adopted effective April 2, 1993, which amend rules governing Certificate of Need review Schedules and categories set forth herein 1993 State Medical Facilities.

Comment Procedures: All written comments must be submitted no later than May 17, 1993, to Jackie Sheppard, APA Coordinator, Division of Facility Services, PO Box 29500, Raleigh, North Carolina 27626-0530, telephone (919) 733-2342.

Editor's Note: These Rules were filed as temporary amendments effective April 2, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner.

CHAPTER 3 - FACILITY SERVICES

**SUBCHAPTER 3R - CERTIFICATE OF
NEED REGULATIONS**

**SECTION .3000 - STATE MEDICAL
FACILITIES PLAN**

**.3001 CERTIFICATE OF NEED
REVIEW CATEGORIES**

The agency has established nine categories of facilities and services for certificate of need review and will determine the appropriate review category or categories for all applications submitted pursuant to 10 NCAC 3R .0304. For proposals which include more than one category, the agency may require the applicant to submit separate applica-

tions. If it is not practical to submit separate applications, the agency will determine in which category the application will be reviewed. The review of an application for a certificate of need will commence in the next review schedule after the application has been determined to be complete. The nine categories of facilities and services are:

- (1) Category A. Proposals, except those proposals included in Categories B through F and Categories H ~~and I through K~~, for acute health service facilities, including but not limited to the following types of projects: renovation, construction, ~~major medical equipment, technology and other ancillary and support equipment and services and acute care services.~~
- (2) Category B. Proposals for long-term nursing facility beds which are reviewed against the State Medical Facilities Plan.
- (3) Category C. Proposals for new psychiatric facilities; psychiatric beds in existing health care facilities; new intermediate care facilities for the mentally retarded (ICF/MR) and ICF/MR beds in existing health care facilities; new substance abuse and chemical dependency facilities; substance abuse and chemical dependency beds in existing health care facilities.
- (4) Category D. Proposals for new or expanded end-stage renal disease treatment facilities; and relocations of existing dialysis stations to another county.
- (5) Category E. Proposals for new or expanded inpatient rehabilitation facilities and inpatient rehabilitation beds in other health care facilities.
- (6) Category F. Proposals for new or expanded ambulatory surgical facilities except those proposals included in Categories J or K.
- (7) Category G. Proposals involving cost overruns; expansions of existing continuing care facilities which are applying under exemptions from need determinations in 10 NCAC 3R .3030; relocations within the same county of existing health service facilities, beds or dialysis stations which do not involve an increase in the number of health service facility beds; reallocation of beds or stations; proposals submitted by Academic Medical Center Teaching Hospitals designated prior to January 1, 1990; and any other proposal

- not included in Categories A through F, or Category H, ~~or through~~ Category ~~I~~ K.
- (8) Category H. Proposals for new continuing care facilities applying for exemption under 10 NCAC 3R .3050(b)(2) and new home health agencies or offices.
- (9) Category I. Proposals for converting hospital beds to nursing care under 10 NCAC 3R .3050(b)(1).
- (10) Category J. Includes proposals for bone marrow transplantation services, burn intensive care services, neonatal intensive care services, open heart surgery services, solid organ transplantation services, air ambulance equipment, cardiac angioplastic equipment, cardiac catheterization equipment, heart-lung bypass machine, gamma knife, lithotriptors, magnetic resonance imaging scanner, positron emission tomography scanners, and major medical equipment as defined in G.S. 131E-176 (14f).
- (11) Category K. Includes proposals for diagnostic centers and oncology treatment centers.

Statutory Authority G.S. 131E-176(25); 131E-177(1); 131E-183(1).

.3020 CERTIFICATE OF NEED REVIEW SCHEDULE

The agency has established the following schedule for review of categories and subcategories of facilities and services in 1993:

- (1) Category B. Subcategory Long-Term Nursing Facilities.

County	HSA	CON Beginning Review Date
Person	IV	March 1, 1993
Hertford	VI	April 1, 1993
Macon	I	August 1, 1993
Mitchell	I	August 1, 1993
Johnston	IV	March 1, 1993
Harnett	V	October 1, 1993
Wayne	VI	April 1, 1993
Duplin	VI	October 1, 1993
Washington	VI	October 1, 1993
Wilkes	I	February 1, 1993

- (2) Category C. Subcategory Intermediate Care Facilities for Mentally Retarded.

Counties	HSA	CON Beginning Review Date
Mecklenburg	III	May 1, 1993
Buncombe, Madison, Mitchell, Yancey	I	June 1, 1993
Moore, Hoke, Richmond, Montgomery, Anson	V	June 1, 1993
Craven, Jones, Pamlico, Carteret	VI	June 1, 1993
Pitt	VI	June 1, 1993
Beaufort, Washington, Tyrrell, Hyde, Martin	VI	December 1, 1993

- (3) Category D. Subcategory End Stage Renal Disease Dialysis Stations. Dialysis station review shall be conducted under the provisions of 10 NCAC 3R .3032.

- (4) Category H. Subcategory Home Health Agencies or Offices.

County	HSA	CON Beginning Review Date
Davidson	II	April 1, 1993
Forsyth	II	April 1, 1993
Guilford	II	October 1, 1993
Dare	VI	February 1, 1993

- (5) All categories for which review dates are not specified in Subparagraph (1), (2), (3), (4) of this Rule.

CON BEGIN- NING REVIEW DATE	HSA I	HSA II	HSA III	HSA IV	HSA V	HSA VI
January 1	--	--	--	--	--	--
February 1	B, G, I	B, G, I	A, G, E, H, I	A, G, E, H, I	A, G, E, H, I	A, G, E, H, I
March 1	--	--	B, G	B, G	--	--
April 1	A, G, E, H	A, G, E, H	--	--	B, G	B, G
May 1	--	--	C, G, F	C, G, F	--	--

June 1	A, C, G, F, D	A, C, G, F, D	D	D	A, C, G, F, D	A, C, G, F, D
July 1	--	--	A, G, H	A, G, H	--	--
August 1	B, G	B, G	--	--	G, E, H	G, E, H
September 1	--	--	B, G, E, <u>J</u> , <u>K</u>	B, G, E, <u>J</u> , <u>K</u>	--	--
October 1	G, E, H, <u>J</u> , <u>K</u>	G, E, H, <u>J</u> , <u>K</u>	--	--	B, G, <u>J</u> , <u>K</u>	B, G, <u>J</u> , <u>K</u>
November 1	--	A, C, G, F	A, C, G, F	A, C, G, F	--	--
December 1	A, C, D, G, F	D	D	D	A, C, D, G, F	A, C, D, G, F

Statutory Authority G.S. 131E-176(25); 131E-177(1); 131E-183(1).

lina 27601.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Labor intends to amend rules cited as 13 NCAC 7A .0101, .0103; 7B .0703, .1001; adopt rules cited as 13 NCAC 7A .0301 - .0302, .0401, .0601 - .0607; 7F .0101, .0201, .0301; and repeal rules cited as 13 NCAC 7B .0101 - .0110, .0112 - .0118, .0120 - .0121, .0201 - .0202, .0301 - .0317, .0501 - .0509, .0801 - .0804, .0901 - .0905, .1002 - .1003, .1101 - .1111, .1113, .1115 - .1120, .1201 - .1208; 7C .0101 - .0104, .0304 - .0309; 7D .0101 - .0104, .0201 - .0203, .0301 - .0302, .0401 - .0408, .0501 - .0506, .0601 - .0606, .0701 - .0704, .0801 - .0803, .0901 - .0902, .1001 - .1002, .1101 - .1105, .1201 - .1206, .1301 - .1302, .1401 - .1403, .1501 - .1509, .1601 - .1604, .1701 - .1702, .1801 - .1805, .1901 - .1904, .2001 - .2004; 7E .0101 - .0102, .0201 - .0202, .0301 - .0303, .0401 - .0403, .0501 - .0502, .0601 - .0602, .0701 - .0702, .0801 - .0802, .0901 - .0903, .1001 - .1004, .1101 - .1103, .1201 - .1203, .1301 - .1302, .1401 - .1402, .1501 - .1503, .1601 - .1604, .1701 - .1702, .1801 - .1802, .1901 - .1903, .2001 - .2002, .2101 - .2102.

The proposed effective date of this action is July 1, 1993.

The public hearing will be conducted at 2:00 p.m. on May 6, 1993 at the Labor Building, Room 249, 4 West Edenton Street, Raleigh, North Caro-

Reason for Proposed Action:

13 NCAC 7A .0101 - To correct name and address of Division of Occupational Safety and Health.

13 NCAC 7A .0103 - To correct name and addition of definitions used in further adoptions to Title 13, Chapter 7A.

13 NCAC 7A .0301 - To adopt the federal rules by reference with specific North Carolina differences spelled out.

13 NCAC 7A .0302 - To relate where copies of the rules may be obtained and the cost of same.

13 NCAC 7A .0401 - Implementation of a new Occupational Safety and Health program, the Carolina Star Program, for recognition and promotion of outstanding employer-provided safety and health plans.

13 NCAC 7A .0601 - .0607 - Implementation of rules to put into effect Article 22 of Chapter 95 of the General Statutes, "Safety and Health Programs and Committees," ratified by the 1991 Session ((Regular Session 1992) c. 962) of the North Carolina General Assembly.

13 NCAC 7B .0101 - .0110, .0112 - .0118, .0120 - .0121, .0201 - .0202, .0301 - .0317, .0501 - .0509, .0801 - .0804, .0901 - .0905, .1002 - .1003, .1101 - .1111, .1113, .1115 - .1120, .1201 - .1208 - Repealing rules pursuant to adoption by reference of corresponding federal rules.

13 NCAC 7B .0703 - To allow Advisory Council members to serve successive terms.

13 NCAC 7B .1001 - Technical amendments which clarify disclosure policy.

13 NCAC 7C .0101 - .0104, .0304 - .0309 -

Standards interpretations are inconsistent with agency procedures; also, 13 NCAC 7C .0304 - .0309 repealed by N.C.G.S. 95-131(g).

13 NCAC 7D .0101 - .0104, .0201 - .0203, .0301 - .0302, .0401 - .0408, .0501 - .0506, .0601 - .0606, .0701 - .0704, .0801 - .0803, .0901 - .0902, .1001 - .1002, .1101 - .1105, .1201 - .1206, .1301 - .1302, .1401 - .1403, .1501 - .1509, .1601 - .1604, .1701 - .1702, .1801 - .1805, .1901 - .1904, .2001 - .2004 - Standards interpretations are inconsistent with agency procedures.

13 NCAC 7E .0101 - .0102, .0201 - .0202, .0301 - .0303, .0401 - .0403, .0501 - .0502, .0601 - .0602, .0701 - .0702, .0801 - .0802, .0901 - .0903, .1001 - .1004, .1101 - .1103, .1201 - .1203, .1301 - .1302, .1401 - .1402, .1501 - .1503, .1601 - .1604, .1701 - .1702, .1801 - .1802, .1901 - .1903, .2001 - .2002, .2101 - .2102 - Standards interpretations are inconsistent with agency procedures.

13 NCAC 7F .0101 - To adopt by reference the federal standards at 29 CFR 1910.

13 NCAC 7F .0201 - To adopt by reference the federal standards at 29 CFR 1926.

13 NCAC 7F .0301 - To adopt by reference the federal standards at 29 CFR 1928.

Comment Procedures: People wanting to present oral testimony at the hearing should provide a written summary of the proposed testimony to the Department by April 30, 1993. Written comments will be accepted until May 18, 1993. Direct all correspondence to Taylor McMillan, North Carolina Department of Labor, 4 West Edenton Street, Raleigh, North Carolina 27601.

CHAPTER 7 - OFFICE OF OCCUPATIONAL SAFETY AND HEALTH

SUBCHAPTER 7A - GENERAL RULES

SECTION .0100 - PURPOSE : DEFINITIONS

.0101 NAME: ADDRESS

The office of occupational safety and health is located in the Raleigh office of the ~~department~~ North Carolina Department of Labor and is known as the OSHA Division. The mailing address of the ~~division~~ office is: ~~Office~~ Division of Occupational Safety and Health, North Carolina Department of Labor, 413 N. Salisbury Street, Raleigh, North Carolina ~~27611~~ 27603-5942.

Statutory Authority G.S. 95-133.

.0103 DEFINITIONS

(a) The following definitions shall apply throughout this Chapter:

- (1) Act. The Occupational Safety and Health Act of North Carolina, G.S. 95, Article 16;
- (2) Division. The Division of Occupational Safety and Health ~~division~~, or OSHA, name used to denote the office of occupational safety and health;
- (3) Director. The Director of the Office of Occupational Safety and Health, Division of Occupational Safety and Health ~~Division~~, or OSHA;
- (4) Days. Calendar days unless otherwise specified. In computing 20 calendar days the day of receipt of any notice shall not be included, but the last day of the 20 calendar days shall be included;
- (5) Working days. Days of the week from Monday through Friday, but shall not include Saturdays, Sundays or state holidays. In computing 15 working days, the day of receipt of any notice shall not be included, but the last day of the 15 working days shall be included;
- (6) Inspection. Any inspection of an employer's factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer, and includes any inspection conducted pursuant to a complaint filed, any reinspection, follow-up inspection, accident investigation or other inspection conducted pursuant to G.S. 95-136 or 95-136.1.

(b) The definitions and interpretations contained in G.S. 95-127 of the Act shall be applicable to such terms when used in this Chapter.

Statutory Authority G.S. 95-127; 95-136(g).

SECTION .0300 - PROCEDURES

.0301 ADOPTION BY REFERENCE

(a) The provisions for Occupational Safety and Health Act Operational Procedures - Inspections, Citations and Proposed Penalties - contained in 29 CFR 1903; Recording and Reporting Occupational

Injuries and Illnesses - contained in 29 CFR 1904;
Consultative Agreements - contained in 29 CFR 1908; and Rules Concerning OSHA Access to Employee Medical Records - contained in 29 CFR 1913.10, have been adopted by reference in accordance with G.S. 150B-21.6 except that where applicable:

- (1) All references to the Williams-Steiger Occupational Safety and Health Act of 1970 (84 Stat. 1590 et seq., 29 U.S.C. 651 et seq) shall mean the Occupational Safety and Health Act of North Carolina, G.S. 95, Article 16;
- (2) All references to the Occupational Safety and Health Review Commission shall mean the Safety and Health Review Board as established in G.S. 95-135;
- (3) All references to Area Offices of the Occupational Safety and Health Administration, U.S. Department of Labor, shall mean the North Carolina Department of Labor, Division of Occupational Safety and Health (or OSHA), the name used to denote the office of occupational safety and health;
- (4) All references to the Secretary or Assistant Secretary shall mean the Commissioner of the North Carolina Department of Labor or his authorized representative;
- (5) All references to Area Director, Regional Administrator, or Assistant Regional Director shall mean the Director of the Division of Occupational Safety and Health (North Carolina Department of Labor) or his authorized representative;
- (6) All references to Regional Solicitor or Solicitor of Labor shall mean the Attorney General, Labor Division, North Carolina Department of Justice;
- (7) All references to Compliance Officers shall mean State compliance safety and health officers;
- (8) All references to the Federal Rules of Civil Procedure shall mean the North Carolina Rules of Civil Procedure;
- (9) 29 CFR 1903.14, "Citations; notices of de minimis violations", is deleted as North Carolina does not have a procedure for issuance of a notice or citation with respect to de minimis violations which have no direct or immediate relationship to safety or

health;

- (10) 29 CFR 1903.14a(c)(1) which requires the posting of a petition for modification for a period of 10 working days shall be for a period of 15 working days, and 29 CFR 1903.14a(c)(2) which refers to the failure to file an objection within 10 working days of the date of posting shall be 15 working days of the posting;
- (11) 29 CFR 1903.21, "Definitions", is not adopted;
- (12) 29 CFR 1908 shall be applicable to private sector consultations, and shall be used as guidance for consultations to state and local governments in North Carolina under the State Plan;
 - (A) All references to OSHA enforcement authority shall mean State OSHA compliance;
 - (B) All references in 29 CFR 1908 which allow employers exemption from general schedule OSHA enforcement inspections shall mean programmed safety inspections; employers shall be exempt from programmed safety inspections for one year from the satisfactory completion of abatement of all hazards identified by the Consultant if the required elements of an effective safety and health program are in place. Applicable to 29 CFR 1908.5(a)(3) and 29 CFR 1908.7(b)(4);
 - (C) In 29 CFR 1908.7(b)(1) the second sentence shall read: "An on-site consultative visit shall be considered in progress in relation to the working conditions, hazards, or situations covered by the request from the beginning of the opening conference through the end of the closing conference and completion of abatement for hazards identified, except that for periods which exceed 30 days from the initiation of the opening conference, the Director may determine that the inspection will proceed."

(b) The Code of Federal Regulations adopted by reference in this Subchapter shall automatically include any subsequent amendments thereto as allowed by G.S. 150B-21.6.

Statutory Authority 95-133; 150B-21.6.

.0302 COPIES AVAILABLE

Copies of the applicable Code of Federal Regulations sections referred to in this Chapter are available for public inspection at the North Carolina Department of Labor, Division of Occupational Safety and Health. A single copy may be obtained from the Division at no cost; each additional copy may be obtained at a cost of ten dollars and sixty cents (\$10.60) (inclusive of tax). Copies may also be obtained from the office of the U.S. Government Printing Office, Washington, D.C. 20402, at a cost of twenty-nine dollars (\$29.00).

Statutory Authority 95-133; 150B-21.6.

SECTION .0400 - PROGRAMS

.0401 CAROLINA STAR PROGRAM

(a) Establishment. There is established, within the Division of Occupational Safety and Health, North Carolina Department of Labor, the Carolina Star Program for recognition and promotion of outstanding employer-provided, employee-participant, site-specific occupational safety and health systems. Specific criteria for the implementation of the Carolina Star Program shall be established by the Commissioner of Labor.

(b) Participation. The program is established on the basis of voluntary participation by employers. Qualified employers will be put on a list of "recognized employers" who shall be exempt from programmed inspections contingent upon maintaining the requirements for participation and continued, favorable triennial evaluations. Minimal requirements for participation in this program are:

- (1) Employer management must have comprehensive written programs which address the safety and health of all employees and which are integrated into the overall management system of the organization;
- (2) Employees must actively participate in safety and health programs and problem identification and resolution;
- (3) Both the average injury incidence rates and the average lost workday injury case rates for the most recent three calendar years for a prospective employer-participant at the time of approval must be at or below 50% of the most recent specific industry state

average published by the North Carolina Department of Labor (worksites with less than three years' experience will be considered based on total experience);

- (4) The combined overall average injury and lost workday case rates for the most recent calendar year for all contractors' employees assigned to a site must also be at or below 50% of the most recent specific industry state average published by the North Carolina Department of Labor (worksites with less than three years' experience will be considered based on total experience.);
- (5) There must exist within the employer's current program a system for annual evaluation of the operation of the safety and health program to judge the success in meeting goals and objectives;
- (6) Application must be made to the Division of Occupational Safety and Health; and
- (7) Verification, evaluation and approval of each prospective employer-applicant must be made by the Division of Occupational Safety and Health.

(c) Public Access. The following documents shall be maintained for public access in the Division of Occupational Safety and Health beginning on the day the program applicant is approved and continuing for as long as the applicant remains active within the program:

- (1) Carolina Star Program application and amendments;
- (2) pre-approval report and subsequent evaluation reports;
- (3) transmittal memoranda to the Commissioner of Labor; and
- (4) the Commissioner of Labor's approval letter.

(d) Evaluation. The Carolina Star Program participants shall be re-evaluated every three calendar years to determine continued qualification for the program; to document results of program participants; and, to identify any problems that have the potential to adversely affect continued Carolina Star Program qualification.

(e) Termination and Reapplication.

- (1) Termination of a Carolina Star designation by an employer shall occur:
 - (A) at construction sites upon completion of construction work at the site;
 - (B) at the sale of the approved site to

another company or through a management change at the approved site; or

(C) when said employer, for any reason, so resolves.

(2) Termination of a Carolina Star designation by the Division of Occupational Safety and Health shall occur at any time during the three year period if a significant failure to maintain the safety and health program in accordance with program requirements has been identified and there has been a failure to correct the situation.

(3) Reapplication following termination shall not be considered for a period of five years from the date of termination.

(4) Reinstatement requires reapplication.

Statutory Authority G.S. 95-133.

SECTION .0600 - SAFETY AND HEALTH PROGRAMS AND COMMITTEES

.0601 PURPOSE AND SCOPE

(a) This Section sets forth rules of procedure for implementation of G.S. 95, Article 22 which is entitled "Safety and Health Programs and Committees."

(b) The purpose of this Section is to establish programs which will promote safety and health for all North Carolina employers with a workers' compensation experience rate modifier of 1.5 or above. Employee Safety and Health Committees will be established by all North Carolina employers having 11 or more employees and an experience rate modifier of 1.5 or above.

Statutory Authority G.S. 95-251; 95-252; 95-254.

.0602 DEFINITIONS

(a) "Fixed location worksite" means any worksite to which an employee regularly reports for at least a consecutive three month period.

(b) "Near-miss" means any accident or incident at a worksite that does not result in injury, but the potential for serious physical harm exists.

Statutory Authority G.S. 95-251.

.0603 SAFETY AND HEALTH PROGRAMS

(a) All Safety and Health programs established under G.S. 95-251 for both fixed locations and non-fixed locations shall at least meet the

requirements of G.S. 95-251(b)(1)-(9).

(b) The written program shall also include:

(1) How managers, supervisors, and employees are responsible for implementing the program and how the continued participation of management will be established, measured, and maintained including specifically what the leadership role of the top employer official at the work site shall be.

(2) How the plan will be communicated to all affected employees so that they are informed of work-related hazards and controls.

(3) How safe work practices and rules will be enforced.

(4) How workplace accidents will be investigated and corrective action implemented. The committee shall keep a comprehensive record of accident investigations, findings, and corresponding corrective action taken.

(5) How near-miss incidents will be investigated. Special emphasis will be placed on identifying all contributing factors to any near-miss incident. The committee shall keep a comprehensive record of each such incident and the findings relating to it, and shall keep a record of all corresponding corrective action taken.

(6) The methods used to identify, analyze and control new or existing hazards, conditions and operations, and how changes will be incorporated into the safety program, safety committee checklist, and communicated to all affected employees.

(7) Written compliance plans as required by OSHA standards including, but not limited to, Excavations, Hazard Communication, Occupational Noise Exposure, Control of Hazardous Energy Sources (Lockout/Tagout), Respiratory Protection, Process Safety Management of Highly Hazardous Chemicals, Bloodborne Pathogens, Life Safety Code, Cotton Dust, and Confined Spaces.

(8) A written checklist of all potential hazards to be inspected during the quarterly inspections required pursuant to G.S. 95-252(c)(4)(d) including, but not limited to, checking for properly marked doors (including exit doors and

doors not leading to an exit); properly working fire extinguishers; unlisted hazardous substances, improperly located hazardous substances, or hazardous substances for which there is no MSDS; doorways or exit pathways that are cluttered; improperly grounded equipment and exposed live wiring and parts; and unguarded machinery. Each item on the aforementioned list shall be checked during the quarterly inspections and a copy of the list shall be retained by the employer for not less than two years. All items deemed to be out of compliance shall be immediately abated.

- (9) The employer shall conduct an annual self-audit of all required safety and health programs. Written findings and a statement of abatement actions taken shall be retained for not less than two years.
- (10) The purpose and operation of the Safety and Health Committee where such committee exists.

Statutory Authority G.S. 95-251.

.0604 SELECTION OF SAFETY COMMITTEES

(a) An employer may elect to implement any one of the following selection processes as a means of meeting the requirements for selection of representatives to employee Safety and Health committees pursuant to G.S. 95-252(d). The employer shall retain written documentation outlining any selection process. In the case of larger employers, it is preferable that employees from each functional work area be represented on the safety and health committee(s).

- (1) The employer may require that all non-management employees serve on a Safety and Health Committee. In the instance of a small employer, there may be one committee comprised of all non-management employees which serves the entire organization. In a larger organization, there may be several committees, each addressing one or more of the responsibilities of the safety committee as outlined in G.S. 95-252, with employees divided among the committees.
- (2) The employer may conduct an election at either a meeting or through the

distribution of ballots. The election process shall provide for the nomination by non-management employees (including self-nominations) of non-management employees in the numbers specified by the employer, but shall not be less than one nor more than the number of non-management members specified by statute. The number of non-management employees specified by statute receiving the most nominations shall serve on the Safety and Health Committee.

- (3) The employer may conduct an employee meeting at which open nominations and open elections are conducted to select employee representatives. The meeting may be for all non-management employees or by working unit.
- (4) The employer may conduct an employee meeting at which non-management employees nominate one peer by listing that employee's name on a ballot. The ballots shall be tallied and the appropriate number of representatives, in the numbers required by statute, shall be determined by those employees named on the most ballots.
- (5) The employer may solicit nominations from all non-management employees for employee representatives to serve on the committee, then select representatives by lottery from among those nominated to obtain the statutorily appropriate number of employee representatives for the safety and health committee.
- (6) The employer may solicit volunteers and nominations from among the non-management employees for a pool of applicants to serve as employee representatives on the safety committee. (If no volunteers or nominations are received, the employer shall require that nominations be submitted from a cross section of employee work units within the establishment.) The members of the applicant pool shall select from among its ranks the initial employee representatives necessary to meet minimum numbers as specified in the statute.
- (7) Employees shall be selected to serve on a safety and health committee(s) in

accordance with any contract that exists between a collective bargaining unit and the employer. Should the contract not otherwise specify selection of a safety and health committee, non-management members shall be selected in a manner approved by the certified collective bargaining agent.

(8) Employers having more than one collective bargaining unit shall devise and implement a means of employee selection utilizing the provisions of the existing contracts, insuring that all bargaining units are represented on safety and health committees.

(9) Employers having some non-management employees represented by a collective bargaining unit and some not represented shall devise a means that utilizes language in the contract for selection of bargaining unit representatives, and one or more of the above means for selecting non-management employee members not represented by the bargaining unit.

(10) The employer may devise and implement other means of employee selection so long as the employee representatives are selected:

(A) "by and from among the employer's non-management employees" as specified in the statute,

(B) minimum numbers are met, and

(C) the intent of the statute is satisfied.

(b) However initial members of the committee are selected, replacement members may be chosen in accordance with one of the procedures in this Rule, or the committee may be self-perpetuating in terms of current members selecting replacements, or the employer may devise some other means for replacements as long as the employee representatives are selected "by and from among the employer's non-management employees."

(c) Non-management employee representatives shall serve a term of at least one year, and shall not be allowed to succeed themselves in the same position more than once. Terms may be staggered.

(d) It shall not be a violation of any part of the statute if an employer has a safety and health program utilizing some other form of employee involvement which has been in operation for more than one year prior to July 15, 1993, and which is submitted for approval and subsequently approved by the Commissioner or his authorized

representative, for that program to be used to satisfy the requirements of this Section.

Statutory Authority G.S. 95-252.

.0605 MULTI-SITE EMPLOYER COMMITTEE REQUIREMENTS

(a) Employers with employees who do not report to a fixed location worksite, but meet the other requirements of G.S. 95-251 and, if applicable, G.S. 95-252, are required to have a Safety and Health Committee. An employer with mobile work crews shall have at least one committee for each type of crew. However, if 11 or more employees of such an employer also report to a fixed location worksite, then that location must have a separate Safety and Health Committee.

(b) In the case of a multi-employer construction worksite with a single prime contractor, general contractor, managing contractor or other single-entity contractor, that single entity contractor shall be responsible for establishing a safety and health committee for that site including representatives from each of the subcontractors working at that site.

(c) At multi-employer fixed location worksites, each employer with a Safety and Health Committee must notify the other employers present at that location of the chairperson(s) of their committees and arrange for the exchange of information on hazards that affect other employers.

Statutory Authority G.S. 95-252.

.0606 TRAINING AND EDUCATION

(a) All safety and health committee members shall receive training and education based on the type of business activity in which the employer is involved. At a minimum, members shall receive training regarding the following:

(1) Hazard identification in the workplace.

(2) Principles regarding effective accident and incident investigations.

(3) Employee and employer rights and responsibilities under the Occupational Safety and Health Act of North Carolina and under the Safety and Health Programs and Committees Act.

(4) Recordkeeping requirements of the OSH Act and the Workers Compensation Act.

(5) The most common causes of on-the-job accidents.

(6) The most-often cited OSH violations.

(b) There shall also be established for employees whether or not a safety and health committee is required:

- (1) A system for training and education of all employees in occupational safety and health hazards at the worksite. The system shall contain specific requirements that new employees not be allowed to begin work until thoroughly trained in the safe use of all applicable equipment and substances, and procedures relating to their workplace environment.
- (2) A system of training and education for any existing employee given a new work assignment.
- (3) A system of training and education for all employees when a new substance, process, procedure or piece of equipment is introduced into the workplace and presents a new hazard to safety or health.
- (4) A system of training and education for all employees when any new personal protective equipment or different work practice is used on existing hazards.
- (5) Training to comply with all applicable OSHA employee training requirements, including, but not limited within General Industry to Means of Egress; Powered Platforms, Manlifts, and Vehicle-Mounted Work Platforms; Occupational Health and Environmental Control; Hazardous Materials; Personal Protective Equipment; General Environmental Controls; Medical and First Aid; Fire Protection; Materials Handling and Storage; Machinery and Machine Guarding; Welding, Cutting and Brazing; Special Industries; Electrical; Commercial Diving Operations; Toxic and Hazardous Substances, and Occupational Exposure to Hazardous Chemicals in Laboratories; including, but not limited within the Construction Industry to General Safety and Health Provisions; Occupational Health and Environmental Controls; Personal Protective and Life Saving Equipment; Fire Protection and Prevention; Signs, Signals, and Barricades; Tools - Hand and Power; Welding and Cutting; Electrical; Ladders and Scaffolding; Cranes, Derricks, Hoists, Elevators and

Conveyors; Motor Vehicles, Mechanized Equipment, and Marine Operations; Excavations; Concrete and Masonry Construction; Underground Construction, Caissons, Cofferdams and Compressed Air; Demolitions; Blasting and Use of Explosives; Power Transmission Distribution; Stairways and Ladders; including, but not limited within Agriculture to Roll-Over Protective Structures, and Safety for Agricultural Equipment; and including, but not limited to the Process Safety Management Standard, the Confined Spaces Standard, Hazard Communication Standard, and the Bloodborne Pathogens Standard.

(c) The required safety and health training shall be provided by someone trained to recognize, evaluate and control safety and health hazards. The training may be provided on-site or off-site.

Statutory Authority G.S. 95-254.

.0607 REPORTS

The report forms required from employers within 60 days of notification by the Commissioner of Labor of inclusion in the program shall include the following information:

- (1) Name of the employer.
- (2) Address of employer.
- (3) Telephone number of employer.
- (4) Number of employees.
- (5) SIC Code.
- (6) Unemployment Insurance ID number of the employer.
- (7) Description of the manufacturing or work processes at this location.
- (8) Name and address of any authorized collective bargaining agent.
- (9) Date and Certification of compliance with G.S. 95-251 and, if applicable, G.S. 95-252.
- (10) A timetable for delivery of training to employees and committee members. In no case shall the timetable for delivery of training exceed an additional 90 days beyond notification to the Commissioner of Labor of compliance with these Rules.

Statutory Authority G.S. 95-255.

SUBCHAPTER 7B - OCCUPATIONAL SAFETY AND HEALTH ACT OPERATIONAL PROCEDURES

SECTION .0100 - INSPECTIONS: CITATIONS AND PROPOSED PENALTIES

.0101 PURPOSE AND SCOPE

The North Carolina Occupational Safety and Health Act of 1973 (G.S. 95-136 et seq.) requires, in part, that every employer covered under the act furnish to his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees. The act also requires that employers comply with occupational safety and health standards promulgated under the act, and that employees comply with standards, rules, regulations and orders issued under the act which are applicable to their own actions and conduct. The act authorizes the Department of Labor to conduct inspections, and to issue citations and proposed penalties for alleged violations. The act contains provisions for adjudication of violations, periods prescribed for the abatement of violations, and proposed penalties by the Occupational Safety and Health Review Commission, if contested by an employer or by an employee or authorized representative of employees, and for judicial review. The purpose of this Section is to prescribe rules and to set forth general policies for enforcement of the inspection, citation, and proposed penalty provisions of the act. In situations where this Section sets forth general enforcement policies rather than substantive or procedural rules, such policies may be modified in specific circumstances where the commissioner or his designee determines that an alternative course of action would better serve the objectives of the act.

Statutory Authority G.S. 95-136.

.0102 POSTING OF NOTICE: AVAILABILITY OF REGULATIONS: STANDARDS

(a) Posting

- (1) Each employer shall post and keep posted a notice or notices, to be furnished by the office of occupational safety and health, North Carolina Department of Labor, informing employees of the protections and obligations provided for in the act and that for assistance and information, including copies of the act and of specific safety and health standards, employees should contact the employer or the nearest office of the Department

of Labor. Such notice or notices shall be posted by the employer in each establishment in a conspicuous place or places where notices to employees are customarily posted. Each employer shall take steps to insure that such notices are not altered, defaced, or covered by other material.

- (2) The North Carolina posters "safety and health protection on the job" are approved posters informing both private and public employees of their protections and obligations as defined in G.S. 95-143; such posters when posted by employers covered by the state plan shall constitute compliance with the posting requirements of G.S. 95-143(b). Employers whose operations are not within the issues covered by the state plan must comply with federal regulations regarding posting of notices.
- (3) Reproductions or facsimiles of such state posters shall constitute compliance with the posting requirements of G.S. 95-143(b) where such reproductions or facsimiles are at least 8 1/2 inches by 14 inches, and the printing size is at least 10 point. Whenever the size of the poster increases, the size of the print shall also increase accordingly. The caption or heading on the poster shall be large type, generally not less than 36 point.

(b) "Establishment" means a single physical location where business is conducted or where services or industrial operations are performed, (for example: a factory, mill, store, hotel, restaurant, movie theatre, farm, ranch, bank, sales office, warehouse, or central administrative office) Where distinctly separate activities are performed at a single physical location (such as contract construction activities from the same physical location as a lumber yard) each activity shall be treated as a separate physical establishment, and a separate notice or notices shall be posted in each such establishment to the extent that such notices have been furnished by the office of occupational safety and health, North Carolina Department of Labor. Where employees are engaged in activities which are physically dispersed, such as agriculture, construction, transportation, communications, and electric, gas and sanitary services, the notice or notices required by this Section shall be posted at the location to which employees report each day. Where employees do

not usually work at, or report to, a single establishment, such as longshoremen, traveling salesmen, technicians, engineers, etc., such notice or notices shall be posted at the location from which the employees operate to carry out their activities. In all cases, such notice or notices shall be posted in accordance with the requirements of Paragraph (a) of this Rule.

(c) Copies of the act, all regulations published in this Chapter and all applicable standards will be available at the office of occupational safety and health, North Carolina Department of Labor. If an employer has obtained copies of these materials, he shall make them available upon request to any employee or his authorized representative for review in the establishment where the employee is employed on the same day the request is made or at the earliest time mutually convenient to the employee or his authorized representative and the employer.

(d) Any employer failing to comply with the provisions of this Section shall be subject to citation and penalty in accordance with the provisions of G.S. 95-138.

Statutory Authority G.S. 95-143.

.0103 SECURITY CLEARANCE

Prior to inspecting areas containing information which is classified by an agency of the United States Government in the interest of national security, safety officers shall have obtained the appropriate security clearance.

Statutory Authority G.S. 95-136.

.0104 OBJECTION TO INSPECTION

(a) Upon a refusal to permit a safety officer, in the exercise of his official duties, to enter without delay and at reasonable times any place of employment or any place therein, to inspect, to review records, or to question any employer, owner, operator, agent, or employee, in accordance with Rule .0103 of this Section, or to permit a representative of employees to accompany the safety officer during the physical inspection of any workplace in accordance with Rule .0108 of this Section, the safety officer shall terminate the inspection or confine the inspection to other areas, conditions, structures, machines, apparatus, devices, equipment, materials, records, or interviews concerning which no objection is raised. The safety officer shall endeavor to ascertain the reason for such refusal, and he shall immediately report the refusal and the reason therefor to the

director. The OSHA Director shall immediately consult with the Attorney General, who shall promptly take appropriate action, including compulsory process, if necessary.

(b) Compulsory process may be sought in advance of an inspection or investigation if, in the judgment of the OSHA Director and the legal counsel, circumstances exist which make preinspection process desirable or necessary. Some examples of circumstances in which it may be desirable or necessary to seek compulsory process in advance of an attempt to inspect or investigate include (but are not limited to):

- (1) when the employer's past practice either implicitly or explicitly puts the Secretary on notice that a warrantless inspection will not be allowed;
- (2) when an inspection is scheduled far from the local office and procuring a warrant prior to leaving to conduct the inspection would avoid, in case of refusal of entry, the expenditure of significant time and resources to return to the office, obtain a warrant and return to the worksite;
- (3) when an inspection includes the use of special equipment or when the presence of an expert or experts is needed in order to properly conduct the inspection, and procuring a warrant prior to an attempt to inspect would alleviate the difficulties or costs encountered in coordinating the availability of such equipment or expert.

(c) With the approval of the OSHA Director, compulsory process may also be obtained by the Director, Enforcement or his designee.

(d) For purposes of this Section, the term compulsory process shall mean the institution of any appropriate action, including ex parte application of an inspection warrant or its equivalent. Ex parte inspection warrants shall be the preferred form of compulsory process in all circumstances where compulsory process is relied upon to seek entry to a workplace under this Section.

Statutory Authority G.S. 95-136.

.0105 ENTRY NOT A WAIVER

Any permission to enter, inspect, review records, or question any person, shall not imply or be conditioned upon a waiver of any cause of action, citation, or penalty under the act. Safety officers

are not authorized to grant any such waiver.

Statutory Authority G.S. 95-136.

.0106 ADVANCE NOTICE OF INSPECTIONS

(a) ~~Advance notice of inspections may not be given, except in the following situations:~~

- ~~(1) in cases of apparent imminent danger, to enable the employer to abate the danger as quickly as possible;~~
- ~~(2) in circumstances where the inspection can most effectively be conducted after regular business hours or where special preparations are necessary for an inspection;~~
- ~~(3) where necessary to assure the presence of representatives of the employer and employees of the appropriate personnel needed to aid in the inspection; and~~
- ~~(4) in other circumstances where the director determines that the giving of advance notice would enhance the probability of an effective and thorough inspection.~~

~~(b) In the situations described in Paragraph (a) of this Rule, advance notice of inspections may be given only if authorized by the director, except that in cases of apparent imminent danger, advance notice may be given by the safety officer without such authorization if the director is not immediately available. When advance notice is given, it shall be the employer's responsibility promptly to notify the authorized representative of employees of the inspection, if the identity of such representative is known to the employer. [See Rule .0108(b) of this Section as to situations where there is no authorized representative of employees.] Upon the request of the employer, the safety officer will inform the authorized representative of employees of the inspection, provided that the employer furnishes the safety officer with the identity of such representative and with such other information as is necessary to enable him promptly to inform such representative of the inspection. An employer who fails to comply with his obligation under this Paragraph promptly to inform the authorized representative of employees of the inspection or to furnish such information as is necessary to enable the safety officer promptly to inform such representative of the inspection, may be subject to citation and penalty under G.S. 95-138(a) of the act. Advance notice in any of the situations described in Paragraph (a) of this Rule shall not be given more~~

~~than 24 hours before the inspection is scheduled to be conducted, except in apparent imminent danger situations and in other unusual circumstances.~~

Statutory Authority G.S. 95-136.

.0107 CONDUCT OF INSPECTIONS

~~(a) Subject to the provisions of Rule .0103 of this Section, inspections shall take place at such times and in such places of employment as the director or the safety officer may direct. At the beginning of an inspection, safety officers shall present their credentials to the owner, operator, or agent in charge at the establishment; explain the nature and purpose of the inspection; and indicate generally the scope of the inspection and the records specified in Rule .0103 of this Section which they wish to review. However, such designation of records shall not preclude access to additional records specified in Rule .0103 of this Section.~~

~~(b) Safety officers shall have authority to take environmental samples and to take or obtain photographs related to the purpose of the inspection, employ other reasonable investigative techniques, and question privately any employer, owner, operator, agent or employee of an establishment. (See Rule .0109 of this Section on trade secrets.) As used herein, the term "employ other reasonable investigative techniques" includes, but is not limited to, the use of devices to measure employee exposures and the attachment of personal sampling equipment such as dosimeters, pumps, badges and other similar devices to employees in order to monitor their exposures.~~

~~(c) In taking photographs and samples, safety officers shall take reasonable precautions to insure that such actions with flash, spark producing, or other equipment would not be hazardous. Safety officers shall comply with all employer safety and health rules and practices at the establishment being inspected, and they shall wear and use appropriate protective clothing and equipment.~~

~~(d) The conduct of inspections shall be of such as to preclude unreasonable disruption of the operations of the employer's establishment.~~

~~(e) At the conclusion of an inspection, the safety officer shall confer with the employer or his representative and informally advise him of any apparent safety or health violations disclosed by the inspection. During such conference, the employer shall be afforded an opportunity to bring to the attention of the safety officer any pertinent information regarding conditions in the workplace.~~

~~(f) Inspections shall be conducted in accordance~~

with the requirements of this Rule.

Statutory Authority G.S. 95-136.

.0108 REPRESENTATIVES OF EMPLOYERS AND EMPLOYEES

(a) ~~Safety officers shall be in charge of inspections and questioning of persons. A representative of the employer and a representative authorized by his employees shall be given an opportunity to accompany the safety officer during the physical inspection of any workplace for the purpose of aiding such inspection. A safety officer may permit additional employer representatives and additional representatives authorized by employees to accompany him where he determines that such additional representatives will further aid the inspection. A different employer and employee representative may accompany the safety officer during each different phase of an inspection if this will not interfere with the conduct of the inspection.~~

(b) ~~Safety officers shall have authority to resolve all disputes as to who is the representative authorized by the employer and employees for the purpose of this Section. If there is no authorized representative of employees, or if the safety officer is unable to determine with reasonable certainty who is such representative, he shall consult with a reasonable number of employees concerning matters of safety and health in the workplace.~~

(c) ~~The representative(s) authorized by employees shall be an employee(s) of the employer. However, if in the judgment of the safety officer, good cause has been shown why accompaniment by a third party who is not an employee of the employer (such as an industrial hygienist or a safety engineer) is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace, such third party may accompany the safety officer during the inspection.~~

(d) ~~Safety officers are authorized to deny the right of accompaniment under this Section to any person whose conduct interferes with a fair and orderly inspection. The right of accompaniment in areas containing trade secrets shall be subject to the provisions of Rule .0109 of this Section. With regard to information classified by an agency of the U.S. Government in the interest of national security, only persons authorized to have access to such information may accompany a safety officer in areas containing such information.~~

Statutory Authority G.S. 95-136.

.0109 TRADE SECRETS

(a) ~~G.S. 95-152 of this act is considered a statute within the meaning of section 552(b)(3) of Title 5 of the United States Code, which exempts from the disclosure requirements matters that are "specifically exempted from disclosure by statute."~~

(b) ~~Section 1905 of Title 18 of the United States Code provides: "Whoever, being an officer or employee of the United States or of any department or agency thereof, publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association; or permits any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law, shall be fined not more than \$1,000, or imprisoned not more than one year, or both; and shall be removed from office or employment."~~

(c) ~~At the commencement of an inspection, the employer may identify areas in the establishment which contain or which might reveal a trade secret. If the safety officer has no clear reason to question such identification, information obtained in such areas, including all negatives and prints of photographs, and environmental samples, shall be labeled "confidential trade secret" and shall not be disclosed except in accordance with the provisions of G.S. 95-152 of the act.~~

(d) ~~Upon the request of an employer, any authorized representative of employees under Rule .0108 of this Section in an area containing trade secrets shall be an employee in that area or an employee authorized by the employer to enter that area. Where there is no such representative or employee, the safety officer shall consult with a reasonable number of employees who work in that area concerning matters of safety and health.~~

Statutory Authority G.S. 95-152.

.0110 CONSULTATION WITH EMPLOYEES

~~Safety officers may consult with employees concerning matters of occupational safety and health to the extent they deem necessary for the~~

conduct of an effective and thorough inspection. During the course of an inspection, any employee shall be afforded an opportunity to bring any violation of the act which he has reason to believe exists in the workplace to the attention of the safety officer.

Statutory Authority G.S. 95-136.

.0112 INSPECTION NOT WARRANTED: INFORMAL REVIEW

(a) If the director determines that an inspection is not warranted because there are no reasonable grounds to believe that a violation or danger exists with respect to a complaint under G.S. 95-136(d), he shall notify the complaining party in writing of such determination. The complaining party may obtain review of such determination by submitting a written statement of position with the commissioner and, at the same time, providing the employer with a copy of such statement by certified mail. The employer may submit an opposing written statement of position with the commissioner, and at the same time provide the complaining party with a copy of such statement by certified mail. Upon the request of the complaining party or the employer, the commissioner, at his discretion, may hold an informal conference in which the complaining party and the employer may orally present their views. After considering all written and oral views presented, the commissioner shall affirm, modify, or reverse the determination of the director and furnish the complaining party and the employer a written notification of his decision and the reasons therefor. The decision of the commissioner shall be final and shall not constitute the basis for a contested case as defined in G.S. 150B-2(2).

(b) If the director determines that an inspection is not warranted because the requirements of G.S. 95-136(d) have not been met, he shall notify the complaining party in writing of such determination. Such determination shall be without prejudice to the filing of a new complaint meeting the requirements of G.S. 95-136(d).

Statutory Authority G.S. 95-133.

.0113 IMMINENT DANGER

Whenever and as soon as a safety officer concludes on the basis of an inspection that conditions or practices exist in any place of employment which could reasonably be expected to cause death or serious physical harm

immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by the act, he shall inform the affected employees and employers of the danger and that he is recommending a civil action to restrain such conditions or practices and for other appropriate relief in accordance with the provisions of G.S. 95-140 of the act. Appropriate citations and notices of proposed penalties may be issued with respect to an imminent danger even though, after being informed of such danger by the safety officer, the employer immediately eliminates the imminence of the danger and initiates steps to abate such danger.

Statutory Authority G.S. 95-140.

.0114 CITATIONS: NOTICES OF DE MINIMIS VIOLATIONS

(a) The director shall review the inspection report of the safety officer. If on the basis of the report the director believes that the employer has violated a requirement of G.S. 95-129 of the act, of any standard, rule or order promulgated pursuant to G.S. 95-131 of the act, or of any substantive rule published in this Chapter, he shall, if appropriate, consult with the Attorney General, and he shall issue to the employer either a citation or a notice of de minimis violations which have no direct or immediate relationship to safety or health. An appropriate citation or notice of de minimis violations shall be issued even though after being informed of an alleged violation by the safety officer, the employer immediately abates, or initiates steps to abate, such alleged violation. Any citation or notice of de minimis violations shall be issued with reasonable promptness after termination of the inspection. No citation may be issued under this Section after the expiration of six months following the occurrence of any alleged violation.

(b) Any citation shall describe with particularity the nature of the alleged violation, including a reference to the provision(s) of the act, standard, rule, regulation, or order alleged to have been violated. Any citation shall also fix a reasonable time or times for the abatement of the alleged violation.

(c) If a citation or notice of de minimis violations is issued for a violation alleged in a request for inspection under G.S. 95-136(d)(1) or a notification of violation under G.S. 95-136(d)(2), a copy of the citation or notice of de minimis violations shall also be sent to the employee or representative of employees who made such

request or notification:

(d) After an inspection, if the director determines that a citation is not warranted with respect to a danger or violation alleged to exist in a request for inspection under G.S. 95-136(d)(1) or a notification of violation under G.S. 95-136(d)(2), the informal review procedures prescribed in Rule .0112(a) of this Section shall be applicable. After considering all views presented, the commissioner shall affirm the determination of the director, order a reinspection, or issue a citation if he believes that the inspection disclosed a violation. The commissioner shall furnish the complaining party and the employer with written notification of his determination and the reasons therefor. The decision of the commissioner shall be final and shall not constitute the basis for a contested case as defined in G.S. 150B-2(2).

(e) Every citation shall state that the issuance of a citation does not constitute a finding that a violation of the act has occurred unless there is a failure to contest as provided for in the act, or, if contested, unless the citation is affirmed by the review board.

Statutory Authority G.S. 95-137.

.0115 PETITIONS FOR MODIFICATION OF ABATEMENT DATE

(a) An employer may file a petition for modification of abatement date when he has made a good faith effort to comply with the abatement requirements of a citation, but such abatement has not been completed because of factors beyond his reasonable control.

(b) A petition for modification of abatement date shall be in writing and shall include the following information:

- (1) all steps taken by the employer, and the dates of such action, in an effort to achieve compliance during the prescribed abatement period;
- (2) the specific additional abatement time necessary in order to achieve compliance;
- (3) the reasons such additional time is necessary, including the unavailability of professional or technical personnel, or of materials and equipment, or because necessary construction or alteration of facilities cannot be completed by the original abatement date;
- (4) all available interim steps being taken to safeguard the employees against the

eited hazard during the abatement period;

- (5) a certification that a copy of the petition has been posted and, if appropriate, served on the authorized representative of affected employees, in accordance with Subparagraph (c)(1) of this Rule and a certification of the date upon which such posting and service was made.

(c) A petition for modification of abatement date shall be filed with the Director of the Office of Occupational Safety and Health no later than the close of the next working day following the date on which abatement was originally required. A later filed petition shall be accompanied by the employer's statement of exceptional circumstances explaining the delay.

- (1) A copy of such petition shall be posted in a conspicuous place where all affected employees will have notice thereof or near such location where the violation occurred. The petition shall remain posted for a period of 10 working days. Where affected employees are represented by an authorized representative, said representative shall be served with a copy of such petition.
- (2) Affected employees or their representatives may file an objection in writing to such petition with the director. Failure to file such objection within 10 working days of the date of posting of such petition or of service upon an authorized representative shall constitute a waiver of any further right to object to said petition.
- (3) The Commissioner or his duly authorized agent shall have the authority to approve any petition for modification of abatement date filed pursuant to Paragraphs (b) and (c) of this Rule. Such uncontested petitions shall become final orders pursuant to N.C.G.S. Sections 95-137 (b)(1) and (4).
- (4) The Commissioner or his authorized representative shall not exercise his approval power until the expiration of 15 working days from the date the petition was posted or served pursuant to Subparagraph (c)(1) and (2) of this Rule by the employer.
- (d) Where any petition is objected to by the

Commissioner or affected employees, the petition, citation, and any objections shall be forwarded to the board within 3 working days after the expiration of the 15 day period set out in Subparagraph (c)(4) of this Rule.

Statutory Authority G.S. 95-129.

.0116 PROPOSED PENALTIES

(a) After, or concurrent with, the issuance of a citation, and within a reasonable time after the termination of the inspection, the director shall notify the employer by certified mail or by personal service by the safety officer of the proposed penalty that the director recommended to the commissioner under G.S. 95-138 of the act, or that no penalty is being proposed. Any notice of proposed penalty shall state that the proposed penalty shall be deemed final unless, within 15 working days from the date of receipt of such notice, the employer notifies the director in writing that he intends to contest the citation or the modification of proposed penalty before the review board.

(b) The director shall determine the amount of any proposed penalty, giving due consideration to the appropriateness of the penalty with respect to the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations, in accordance with the provisions of G.S. 95-138 of the act.

(c) Appropriate penalties may be proposed with respect to an alleged violation even though after being informed of such alleged violation by the safety officer, the employer, immediately abates, or initiates steps to abate, such alleged violation. Penalties shall not be proposed for de minimis violations which have no direct or immediate relationship to safety or health.

Statutory Authority G.S. 95-137; 95-138.

.0117 POSTING OF CITATIONS

(a) Upon receipt of any citation under the act, the employer shall immediately post such citation, or a copy thereof, unedited, at or near each place an alleged violation referred to in the citation occurred, except as provided in this Rule. Where, because of the nature of the employer's operations, it is not practicable to post the citation at or near each place of alleged violation, such citation shall be posted, unedited, in a prominent place where it will be readily observable by all affected employees. For example, where employees are

engaged in activities which are physically dispersed [see .0102(b) of this Section], the citation may be posted at the location to which employees report each day. Where employees do not primarily work at or report to a single location [see .0102(b) of this Section], the citation may be posted at the location from which the employees operate to carry out their activities. The employer shall take steps to ensure that the citation is not altered, defaced, or covered by other material. Notices of de minimis violations need not be posted.

(b) Each citation, or a copy thereof, shall remain posted until the violation has been abated, or for three working days, whichever is longer. The filing by the employer of a notice of intention to contest under Rule .0118 of this Section shall not affect his posting responsibility under this Section unless and until the review board issues a final order vacating the citation.

(c) An employer to whom a citation has been issued may post a notice in the same location where such citation is posted indicating that the citation is being contested before the review board, and such notice may explain the reasons for such contest. The employer may also indicate that specified steps have been taken to abate the violation.

(d) Any employer failing to comply with the provisions of Paragraphs (a) and (b) of this Rule shall be subject to citation and penalty in accordance with the provisions of G.S. 95-137 of the act.

Statutory Authority G.S. 95-137.

.0118 EMPLOYER AND EMPLOYEE CONTESTS BEFORE THE REVIEW BOARD

(a) Any employer to whom a citation or notice of proposed penalty has been issued may, under Section G.S. 95-137 of the act, notify the director in writing that he intends to contest such citation or proposed penalty before the review board. Such notice of intention to contest shall be postmarked within 15 working days of the receipt by the employer of the notice of proposed penalty. Every notice of intention to contest shall specify whether it is directed to the citation or to the proposed penalty, or both. The director shall immediately transmit such notice to the review board in accordance with the rules of procedure prescribed by the board.

(b) Any employee or representative of employees of an employer to whom a citation has

been issued may, under G.S. 95-137 of the act, file a written notice with the director alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable. Such notice shall be postmarked within 15 working days of the receipt by the employer of the notice of proposed penalty or notice that no penalty is being proposed. The director shall immediately transmit such notice to the review board in accordance with the rules of procedure prescribed by the board.

Statutory Authority G.S. 95-135.

.0120 INFORMAL CONFERENCES

At the request of an affected employer, employee, or representative of employees, the director may hold an informal conference for the purpose of discussing any issues raised by an inspection, citation, notice of proposed penalty, or notice of intention to contest. The settlement of any issue at such conference shall be subject to the rules of procedure prescribed by the review board. If the conference is requested by the employer, an affected employee or his representative shall be afforded an opportunity to participate, at the discretion of the director. If the conference is requested by an employee or representative of employees, the employer shall be afforded an opportunity to participate, at the discretion of the director. Any party may be represented by counsel at such conference. No such conference or request for such conference shall operate as a stay of any 15 working day period for filing a notice of intention to contest as prescribed in Rule .0118 of this Section.

Statutory Authority G.S. 95-133.

.0121 DEFINITIONS

(a) "Act" means the North Carolina Occupational Safety and Health Act of 1973. (N.C. G.S. 95-126 et seq.)

(b) The definitions and interpretations contained in G.S. 95-127 of the act shall be applicable to such terms when used in this Section .0100.

(c) "Working days" means Mondays through Fridays, but shall not include Saturdays, Sundays, or state holidays. In computing 15 working days, the day of receipt of any notice shall not be included, and the last day of the 15 working days shall be included.

(d) "Safety officer" means a person authorized by the occupational safety and health administration, North Carolina Department of Labor, to conduct safety or health compliance

inspections, and includes authorized persons who conduct industrial hygiene inspections on contract from the Department of Human Resources.

(e) "Director" means the employee or officer regularly or temporarily in charge of the office of occupational safety and health, North Carolina Department of Labor, or any other person or persons who are authorized to act for such employee or officer. The latter authorizations may include general delegations of the authority of a director under this part to a safety officer or delegations to such an officer for more limited purposes, such as the exercise of the director's duties under Rule .0114(a) of this Section. The term also includes any employee or officer exercising supervisory responsibilities over a director. A supervisory employee or officer is considered to exercise concurrent authority with the director.

(f) "Inspection" means any inspection of an employer's factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer, and includes any inspection conducted pursuant to a complaint filed under Rule .0111(a) and (c) of this Section, any reinspection, followup inspection, accident investigation or other inspection conducted under G.S. 95-136(a) of the act.

(g) "Days" means a calendar day unless otherwise specified. In computing 20 calendar days the day of receipt of any notice shall not be included and the last day of the 20 calendar days shall be included.

Statutory Authority G.S. 95-127.

SECTION .0200 - STATE PLANS FOR THE DEVELOPMENT AND ENFORCEMENT OF STATE STANDARDS

.0201 DESCRIPTION OF THE PLAN

The Department of Labor has been designated by the Governor of North Carolina to administer the plan throughout the state. The Department of Labor has entered into an agreement with the State Board of Health whereby the State Board of Health is to assist the Department of Labor in the administration and enforcement of occupational health standards. However, full authority for the promulgation and enforcement of occupational safety and health standards remains with the Department of Labor. The plan defines the covered occupational safety and health issues as defined by the secretary of Labor in section

1902.2(e)(1) of Title 29 of the Code of Federal Regulations. Moreover, it is understood that the plan will cover all employers and employees in the state except those whose working conditions are not covered by the federal act by virtue of section 4(b)(1) thereof, dockside maritime and domestic workers. The Department of Labor is currently exercising statewide inspection authority to enforce many state standards. The plan describes procedures for the development and promulgation of additional laws, and orders in all places of employment in the state; the procedures for prompt restraint or elimination of imminent danger conditions; and procedures for inspections in response to complaints.

Statutory Authority G.S. 95-154.

.0202 WHERE THE PLAN MAY BE INSPECTED

A copy of the complete North Carolina plan may be inspected and copied during normal business hours at the North Carolina Department of Labor, Room 106, Labor Building, Corner of Salisbury and Edenton Streets, Raleigh, North Carolina 27611. A copy of the complete North Carolina plan may also be inspected and copied during normal business hours at:

- (1) the Office of the Assistant Regional Director, Occupational Safety and Health Administration, Suite 587, 1375 Peachtree Street, N.E., Atlanta, Ga., 30309; and
- (2) United States Department of Labor, Office of Federal and State Operations, Occupational Safety and Health Administration, Room 800, 1726 M Street, N.W., Washington, D.C. 20210.

Statutory Authority G.S. 95-154.

SECTION .0300 - RECORDING AND REPORTING OCCUPATIONAL INJURIES AND ILLNESSES

.0301 PURPOSE AND SCOPE

The regulations of this Section implement G.S. 95-143, 95-145 and 95-148 of the North Carolina Occupational Safety and Health Act of 1973 (G.S. 95-126). These sections provide for recordkeeping and reporting by employers covered under the act as necessary or appropriate for enforcement of the act, for developing information regarding the causes and prevention of occupational accidents and illnesses, and for maintaining a program of

collection, compilation, and analysis of occupational safety and health statistics. The regulations in this Section were promulgated with the cooperation of the United States Secretary of Labor.

Statutory Authority G.S. 95-144; 95-145; 95-148.

.0302 LOG AND SUMMARY OF OCCUPATIONAL INJURIES AND ILLNESSES

(a) Each employer shall, except as provided in Subsection (b) of this Rule, maintain in each establishment a log and summary of recordable occupational injuries and illnesses for that establishment and enter each recordable injury and illness on the log and summary as early as practicable but no later than six working days after receiving information that a recordable injury or illness has occurred. For this purpose Form OSHA No. 200 or an equivalent which is as readable and comprehensible to a person not familiar with it shall be used. The log and summary shall be completed in the detail provided in the form and instructions on Form OSHA No. 200.

(b) Any employer may maintain the log and summary of occupational injuries and illnesses at a place other than the establishment or by means of data processing equipment, or both, under the following circumstances:

- (1) There is available at the place where the log and summary is maintained sufficient information to complete the log and summary to a date within six working days after receiving information that a recordable case has occurred, as required by Paragraph (a) of this Rule.
- (2) At each of the employer's establishments, there is available a copy of the log and summary which reflects separately the injury and illness experience of that establishment complete and current to a date within 45 calendar days.

Statutory Authority G.S. 95-143.

.0303 PERIOD COVERED

Records shall be established on a calendar year basis.

Statutory Authority G.S. 95-143.

.0304 SUPPLEMENTARY RECORD

In addition to the log and summary of occupational injuries and illnesses provided for under Rule .0302 of this Section, each employer shall have available for inspection at each establishment within six working days after receiving information that a recordable case has occurred, a supplementary record for each occupational injury or illness for that establishment. The record shall be completed in the detail prescribed in the instructions accompanying office of occupational safety and health Form OSHA No. 101. Workmen's compensation, insurance, or other reports are acceptable alternative records if they contain the information required by Form OSHA No. 101. If no acceptable alternative record is maintained for other purposes, Form OSHA No. 101 shall be used or the necessary information shall be otherwise maintained.

Statutory Authority G.S. 95-143.

.0305 ANNUAL SUMMARY

(a) Each employer shall post an annual summary of occupational injuries and illnesses for each establishment. This summary shall consist of a copy of the year's totals from the Form OSHA No. 200 and the following information from that form: calendar year covered, company name, establishment name, establishment address, certification signature, title, and date. A Form OSHA No. 200 shall be used in presenting the summary. If no injuries or illnesses occurred in the year, zeros must be entered on the totals line, and the form must be posted.

(b) The summary shall be completed by February 1 beginning with calendar year 1979. The summary of 1977 calendar year's occupational injuries and illnesses shall be posted on Form OSHA No. 102.

(c) Each employer, or the officer or employee of the employer who supervises the preparation of the log and summary of occupational injuries and illnesses, shall certify that the annual summary of occupational injuries and illnesses is true and complete. The certification shall be accomplished by affixing the signature of the employer, or the officer or employee who supervises the preparation of the annual summary of occupational injuries and illnesses, at the bottom of the last page of the log and summary or by appending a separate statement to the log and summary certifying that the summary is true and complete.

(d) Each employer shall post a copy of the

establishment's summary in each establishment in the same manner that notices are required to be posted under .0302(a) of this Section. The summary covering the previous calendar year shall be posted no later than February 1, and shall remain in place until March 1. For employees who do not primarily report for work at a single establishment, or who do not report to any fixed establishment on a regular basis, employers shall satisfy this posting requirement by presenting or mailing a copy of the summary portion of the log and summary during the month of February of the following year to each such employee who receives pay during that month. For multi-establishment employers where operations have closed down in some establishments during the calendar year, it will not be necessary to post summaries for those establishments.

(e) A failure to post a copy of the establishment's annual summary may result in the issuance of citations and assessment of penalties pursuant to Sections G.S. 95-137 and 95-138 of the OSHANC.

Statutory Authority G.S. 95-143.

.0306 RETENTION OF RECORDS

Records provided for in .0302, .0304, and .0305 of this Section (including Form OSHA No. 200 and its predecessor Forms OSHA No. 100 and OSHA No. 102) shall be retained in each establishment for five years following the end of the year to which they relate.

Statutory Authority G.S. 95-143.

.0307 ACCESS TO RECORDS

(a) Each employer shall provide, upon request, records provided for in .0302, .0304, and .0305 of this Section for inspection and copying by any representative of the Secretary of Labor or the Commissioner of Labor for the purpose of carrying out the provisions of P.L. 91-596 and the North Carolina OSHA Act, and by representatives of the Secretary of Health, Education, and Welfare during any investigation under Section 20(b) of P.L. 91-596 and the North Carolina OSHA Act, or for statistical compilation under Sections 19 and 24 of P.L. 91-596 and North Carolina OSHA Act.

(b) Log

(1) The log and summary of all recordable occupational injuries and illnesses (OSHA No. 200) (the log) provided for in .0302 of this Section shall, upon request, be made available by the

employer to any employee, former employee, and to their representatives for examination and copying in a reasonable manner and at reasonable times. The employee, former employee, and their representatives shall have access to the log for any establishment in which the employee is or has been employed.

- (2) Nothing in this Section shall be deemed to preclude employees and employee representatives from collectively bargaining to obtain access to information relating to occupational injuries and illnesses in addition to the information made available under this Section.
- (3) Access to the log provided under this Section shall pertain to all logs retained under the requirements of .0306 of this Section.

Statutory Authority G.S. 95-143.

.0308 REPORTING FATALITY OR MULTIPLE HOSPITALIZATION ACCIDENTS

Within 48 hours after the occurrence of an employment accident which is fatal to one or more employees or which results in hospitalization of five or more employees, the employer of any employees so injured or killed shall report the accident either orally or in writing to the Director of the Office of Occupational Safety and Health, North Carolina Department of Labor, Raleigh, North Carolina. The reporting may be by telephone or telegraph. The report shall relate the extent of any injuries. The director may require such additional reports, in writing or otherwise, as he deems necessary, concerning the accident.

Statutory Authority G.S. 95-143.

.0309 FALSIFICATION OR FAILURE TO KEEP RECORDS OR REPORTS

Failure to maintain records or file reports required by this part, or in the details required by forms and instruction issued under this part, may result in the issuance of citations and assessment of penalties as provided for in sections 95-138 and 95-139 of the act.

Statutory Authority G.S. 95-143.

.0310 CHANGE OF OWNERSHIP

Where an establishment has changed ownership, the employer shall be responsible for maintaining records and filing reports only for that period of the year during which he owned such establishment. However, in the case of any change in ownership, the employer shall preserve those records, if any, of the prior ownership which are required to be kept under this part. These records shall be retained at each establishment to which they relate, for the period or remainder thereof, required under Rule .0306 of this Section.

Statutory Authority G.S. 95-143.

.0311 DEFINITIONS

(a) "Act" means the North Carolina Occupational Safety and Health Act of 1973 (G.S. 95-126).

(b) The definitions and interpretations contained in section 95-127 of the act shall be applicable to such terms when used in Section .0300 of this Subchapter.

(c) "Recordable occupational injuries or illnesses" are any occupational or illnesses which result in:

- (1) fatalities, regardless of the time between the injury and death, or the length of the illness; or
- (2) lost workday cases, other than fatalities, that result in lost workdays; or
- (3) nonfatal cases without lost workdays which results in transfer to another job or termination of employment, or require medical treatment (other than first aid) or involve: loss of consciousness or restriction of work or motion; This category also includes any diagnosed occupational illnesses which are reported to the employer but are not classified as fatalities or lost workday cases.

(d) "Medical treatment" includes treatment administered by a physician or by registered professional personnel under the standing orders of a physician. Medical treatment does not include first aid treatment even though provided by a physician or registered professional personnel.

(e) "First aid" is any one time treatment, and any follow up visit for the purpose of observation, of minor scratches, cuts, burns, splinters, and so forth, which do not ordinarily require medical care. Such one-time treatment, and follow up visit for the purpose of observation, is considered first aid even though provided by a physician or registered professional personnel.

(f) ~~"Lost workdays": the number of days (consecutive or not) after, but not including, the day of injury or illness during which the employee would have worked but could not do so; that is, could not perform all or any part of his normal assignment during all or any part of the workday or shift, because of the occupational injury or illness.~~

(g) ~~"Establishment"~~

(1) ~~A single physical location where business is conducted or where services or industrial operations are performed; (for example, farm, ranch, bank, sales office, warehouse, factory, mill, store, hotel, restaurant, movie theatre, or central administrative office) where distinctly separate activities are performed at a single physical location (such as contract construction activities operated from the same physical location as a lumber yard);~~

(2) ~~For firms engaged in activities such as agriculture, construction, transportation, communications, and electric, gas and sanitary services, which may be physically dispersed, records may be maintained at a place to which employees report each day;~~

(3) ~~Records for personnel who do not primarily report or work at a single establishment, and who are generally not supervised in their daily work, such as traveling salesmen, technicians, engineers, etc., shall be maintained at the location from which they are paid or the base from which the personnel operate to carry out their activities.~~

(h) ~~"Establishments Classified in Standard Industrial Classification Codes (SIC) 52-89":~~

(1) ~~Establishments whose primary activity constitutes retail trade; finance, insurance, real estate and services are classified in SIC's 52-89;~~

(2) ~~Retail trades are classified as SIC's 52-59 and for the most part include establishments engaged in selling merchandise to the general public for personal or household consumption. Some of the retail trades are;~~

(A) ~~automotive dealers;~~

(B) ~~apparel and accessory stores;~~

(C) ~~furniture and home furnishing stores; and~~

(D) ~~eating and drinking places;~~

(3) ~~Finance, insurance and real estate are~~

~~classified as SIC's 60-67 and include establishments which are engaged in banking, credit other than banking, security dealings, insurance, and real estate;~~

(4) ~~Services are classified as SIC's 70-89 and include establishments which provide a variety of services for individuals, businesses, government agencies, and other organizations. Some of the service industries are: personal and business services, in addition to legal, education, social, and cultural; and membership organizations;~~

(5) ~~The primary activity of an establishment is determined as follows: For finance, insurance, real estate, and services establishments, the value of receipts or revenue for services rendered by an establishment determines its primary activity. In establishments with diversified activities, the activities determined to account for the largest share of production, sales or revenue will identify the primary activity. In some instances these criteria will not adequately represent the relative economic importance of each of the varied activities. In such cases, employment or payroll should be used in place of the normal basis for determining the primary activity;~~

(6) ~~Administrative departments, commissions, boards, divisions or other agencies of the state and of counties, cities, towns, and subdivisions of government with operations similar to those classified as SIC 52-89 are considered Public Administration SIC 91-99;~~

Statutory Authority G.S. 95-131(a); 95-143.

.0312 PETITIONS FOR RECORDKEEPING EXCEPTIONS

(a) ~~Submission of Petition. Any employer who wishes to maintain records in a manner different from that required by this Part may submit a petition containing the information specified in Paragraph (e) of this Rule to the U.S. Department of Labor Regional Commissioner of the Bureau of Labor Statistics wherein the establishment involved is located.~~

(b) ~~Opportunity for Comment. Affected~~

employees or their representatives shall have an opportunity to submit written data, views, or arguments concerning the petition to the regional director involved within 10 working days following notice under Paragraph (c)(5) of this Rule.

(e) ~~Contents of Petition.~~ A petition filed under Paragraph (a) of this Rule shall include:

- (1) ~~The name and address of the applicant;~~
- (2) ~~The address of the place or places of employment involved;~~
- (3) ~~Specifications of the reasons for seeking relief;~~
- (4) ~~A description of the different recordkeeping procedures which are proposed by the applicant;~~
- (5) ~~A statement that the applicant has informed his affected employees of the petition by giving a copy thereof to them or to their authorized representative and by posting a statement giving a summary of the petition and by other appropriate means; A statement posted pursuant to this Subparagraph shall be posted in each establishment in the manner that notices are required to be posted under Rule .0102(a) of this Subchapter. The applicant shall also state that he has informed his affected employees of their rights under Paragraph (b) of this Rule;~~
- (6) ~~In the event an employer has more than one establishment he shall submit a list of the states in which such establishments are located and the number of establishments in each such state. In the further event that certain of the employer's establishments would not be affected by the petition, the employer shall identify every establishment which would be affected by the petition and give the state in which they are located.~~

(d) ~~Referrals to Assistant Commissioner.~~ Whenever a regional director receives a petition from an employer having one or more establishments beyond the geographic boundary of his region, or a petition from a class of employers having any establishment beyond the boundary of his region, he shall refer the petition to the assistant commissioner.

(e) ~~Additional Notice, Conferences~~

- (1) ~~In addition to the actual notice provided for in Paragraph (c)(5) of this Rule, the~~

~~assistant commissioner or the regional director, as the case may be, may provide, or cause to be provided, such additional notice of the petition as he may deem appropriate.~~

- (2) ~~The assistant commissioner or the regional director, as the case may be, may also afford an opportunity to interested parties for informal conference or hearing concerning the petition.~~

(f) ~~Action.~~ After review of the petition, and of any comments submitted in regard thereto, and upon completion of any necessary appropriate investigation concerning the petition, if the regional director or the assistant commissioner, as the case may be, finds that the alternative procedure proposed will not hamper or interfere with the purposes of the act and will provide equivalent information, he may grant the petition subject to such conditions as he may determine appropriate, and subject to revocation for cause.

(g) ~~Publication.~~ Whenever any relief is granted to an applicant under this act, notice of such relief, and the reasons therefor, shall be published in the Federal Register.

(h) ~~Revocation.~~ Whenever any relief under this Section is sought to be revoked for any failure to comply with the conditions thereof, an opportunity for informal hearing or conference shall be afforded to the employers and affected employees, or their representatives. Except in cases of willfulness or where public safety or health requires otherwise, before the commencement of any such informal proceeding, the employer shall:

- (1) ~~be notified in writing of the facts or conduct which may warrant the action, and~~
- (2) ~~be given an opportunity to demonstrate or achieve compliance.~~

(i) ~~Compliance After Submission of Petitions.~~ The submission of a petition or any delay by the regional director, or the assistant commissioner, as the case may be, in acting upon a petition shall not relieve any employer from any obligation to comply with this part. However, the regional director or the assistant commissioner, as the case may be, shall give notice of denial of any petition within a reasonable time.

(j) ~~Consultation.~~ There shall be consultation between the appropriate representatives of the occupational safety and health administration and the bureau of labor statistics in order to insure the effective implementation of this Section.

Statutory Authority G.S. 95-143.

.0313 EMPLOYEES NOT IN FIXED ESTABLISHMENTS

Employees of employers engaged in physically dispersed operations such as occur in construction, installation, repair or service activities who do not report to any fixed establishment on a regular basis but are subject to common supervision may satisfy the provisions of .0302, .0304, and .0306 of this Section with respect to such employees by:

- (1) maintaining the required records for each operation or group of operations which is subject to common supervision (field superintendent, field supervisor, etc.) in an established central place;
- (2) having the address and telephone number of the central place available at each worksite; and
- (3) having personnel available at the central place during normal working business hours to provide information from the records maintained there by telephone and by mail.

Statutory Authority G.S. 95-143.

.0314 SMALL EMPLOYERS

An employer who had no more than 10 employees at any time during the calendar year immediately preceding the current calendar year need not comply with any of the requirements of this Rule except the following:

- (1) obligation to report under .0308 of this Section concerning fatalities or multiple hospitalization accidents; and
- (2) obligation to maintain a log and summary of occupational injuries and illnesses under .0302 of this Section and to make reports under .0316 of this Section upon being notified in writing by the Bureau of Labor Statistics that the employer has been selected to participate in a statistical survey of occupational injuries and illnesses.

Statutory Authority G.S. 95-143.

.0315 DESCRIPTION OF STATISTICAL PROGRAM

(a) Section 95-144 of the North Carolina OSHA Act and section 45 of the U.S. OSHA Act directs the Commissioner of Labor to develop and maintain a program of collection, compilation, and analysis of occupational safety and health statistics.

The Commissioner of the Bureau of Labor Statistics has been subdelegated this authority by the Secretary of Labor. The program shall consist of periodic surveys of occupational injuries and illnesses.

(b) The sample design encompasses probability procedures, detailed stratification by industry and size, and a systematic selection within strata. Stratification and sampling will be carried out by state and other jurisdictions in order to provide the most efficient sample for eventual state estimates. Some industries will be sampled more heavily than others depending on the injury rate level based on previous experience. Nationally, the survey should produce adequate estimates for most four digit standard industrial classification (SIC) industries in manufacturing and for three digit SIC classification in non-manufacturing. In participating states where the sample size has been supplemented significantly, comparable estimates are possible.

Statutory Authority G.S. 95-145.

.0316 DUTIES OF EMPLOYERS

Upon receipt of an Occupational Injuries and Illnesses Survey Form, the employer shall promptly complete the form in accordance with the instructions contained therein, and return it in accordance with the aforesaid instructions.

Statutory Authority G.S. 95-145.

.0317 STANDARD INDUSTRIAL CLASSIFICATION CODES

(a) An employer whose establishment is classified in SIC's 52-89, (excluding 52-54, 70, 75, 76, 79 and 80) need not comply, for such establishment, with any of the requirements of this part except the following:

- (1) obligation to report under 13 NCAC 7B .0308 concerning fatalities or multiple hospitalization accidents; and
- (2) obligation to maintain a log of occupational injuries and illnesses under 13 NCAC 7B .0315, upon being notified in writing by the Bureau of Labor Statistics that the employer has been selected to participate in a statistical survey of occupational injuries and illnesses.

(b) Administrative departments, commissions, boards, divisions or other agencies of the state and of counties, cities, towns, and subdivisions of government are not exempted from obligations to

report under 13 NCAC 7B .0308 and obligations to maintain a log of occupational injuries and illnesses under 13 NCAC 7B .0315.

Statutory Authority G.S. 95-131(a); 95-143.

SECTION .0500 - RULES OF PROCEDURE FOR PROMULGATING; MODIFYING; OR REVOKING OCCUPATIONAL SAFETY OR HEALTH STANDARDS

.0501 PURPOSE AND SCOPE

This Section sets forth rules of procedures for promulgating, modifying or revoking occupational safety or health standards under section 95-131 of the Occupational Safety and Health Act of North Carolina. The purpose of these rules is to provide for single proceedings in the setting of standards where the Commissioner of Labor determines that a state standard is appropriate. These rules do not apply when the commissioner adopts state standards identical to federal standards. As used in this Section, unless the context clearly requires otherwise:

- (1) "Commissioner" means the Commissioner of Labor of North Carolina.
- (2) "Act" means the Occupational Safety and Health Act of North Carolina, Article 16 of Chapter 95 of the North Carolina General Statutes.
- (3) "Standard" means an occupational safety and health standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment, and which is to be promulgated, modified or revoked in accordance with section six of the act.
- (4) "Secretary" means the United States Secretary of Labor.
- (5) "Advisory council" means that body created under the act to advise the commissioner on matters relating to the administration of the office of occupational safety and health.

Statutory Authority G.S. 95-131.

.0502 PROMULGATION; MODIFICATION; OR REVOCATION OF A STANDARD

Any interested person may file with the Commissioner of Labor of the North Carolina

Department of Labor, 4 West Edenton Street, Raleigh, North Carolina 27601, a written petition for the adoption, promulgation, modification, or revocation of a standard. The petition should include, or be accompanied by, the proposed rule desired and a statement of the reasons therefor and intended effect thereof.

Statutory Authority G.S. 95-131.

.0503 ADDITIONAL OR ALTERNATIVE PROCEDURAL REQUIREMENTS

Upon reasonable notice to interested persons, the commissioner may in any particular proceeding prescribe additional or alternative procedural requirements:

- (1) in order to expedite the conduct of the proceeding;
- (2) in order to provide greater procedural protection to interested persons whenever it is found necessary or appropriate to do so; or
- (3) for any good cause which may be consistent with the applicable laws.

Statutory Authority G.S. 95-131.

.0504 STANDARDS COMMENCEMENT OF RULEMAKING

The commissioner may adopt, promulgate, modify, or revoke a standard applicable to employments in the following manner:

- (1) The commissioner may request the recommendations of the advisory council appointed under section 95-134 of the act. In such event, the commissioner shall submit to the council all pertinent factual information available to him, including the results of research, demonstrations, and experiments. The council shall submit to the commissioner its recommendations regarding the rule to be promulgated within the period prescribed by the commissioner, but in no event shall be longer than 270 days.
- (2) The commissioner shall publish in one newspaper of general circulation in Asheville, Charlotte, Durham, Greensboro, Raleigh, Wilmington and Winston-Salem, a notice of proposed rulemaking and shall afford interested parties a period of 30 days after publication to submit written data or comments. The notice shall include:
 - (a) the terms of the proposed rule;

- (b) ~~a reference to section 95-131 of the act and to the appropriate section of any particular statute applicable to the employments affected by the rule;~~
- (c) ~~an invitation to interested persons to submit, within 30 days after publication of the notice, written data, views and arguments which shall be available for public inspection and copying, except as to matters whose disclosure is prohibited by law;~~
- (d) ~~either the time and place of an informal hearing on the proposed rule to be held not earlier than 10 days from the last day of the period for written comments, or information to interested persons that they may file on or before the 30th day after publication of the notice, written objections to the proposed rule meeting the requirements of (3) of this Rule and request an informal hearing on the objections; and~~
- (e) ~~any other appropriate provisions with regard to the proceeding.~~
- (3) ~~Objections to be submitted pursuant to (2) of this Rule shall comply with the following conditions:~~
 - (a) ~~The objections must include the name and address of the objector;~~
 - (b) ~~The objections must be postmarked on or before the 30th day after the date of publication of the notice of proposed rulemaking;~~
 - (c) ~~The objections must specify with particularity the provision of the proposed rule to which objection is taken, and must state the grounds therefor;~~
 - (d) ~~Each objection must be separately stated and numbered; and~~
 - (e) ~~The objections must be accompanied by a summary of the evidence proposed to be adduced at the requested hearing.~~
- (4) ~~Within 30 days after the last day for filing objections, if objections are filed in substantial compliance with Rule (2) of this Rule, the commissioner shall, and in any other case may, publish in the newspapers specified in (2) of this Rule, notice of hearing at least 30 days prior to the scheduled date. The notice shall contain:~~
 - (a) ~~A statement of the time, place, and nature of the hearing;~~
 - (b) ~~A reference to the authority under~~

~~which the hearing is to be held; must indicate subject matter of proposed rule;~~

- (c) ~~A specification of the provisions of the proposed rule which has been objected to, and on which a hearing has been requested;~~
- (d) ~~A specification of the issues on which the hearing is to be had, which shall include at least all the issues raised by any objections properly filed and on which a hearing has been requested;~~
- (e) ~~The requirement for the filing of an intention to appear at the hearing together with a statement of the position to be taken with regard to the issues specified and of the evidence to be adduced in support of the position;~~
- (f) ~~The designation of a presiding officer to conduct the hearing; and where copies of the proposed standard may be inspected;~~
- (g) ~~Any other appropriate provisions with regard to the proceeding;~~
- (h) ~~Any objector requesting a hearing on a proposed rule, and any interested person who files a proper intention to appear shall be entitled to participate at a hearing.~~

Statutory Authority G.S. 95-131.

.0505 EMERGENCY STANDARDS

(a) ~~Whenever an emergency standard is published pursuant to section 95-131(e) of the act, the commissioner shall commence a proceeding under section 95-131(b) of the act and the standard as published must serve as a proposed rule. Any notice of proposed rulemaking shall also give notice of any appropriate subsidiary proposals.~~

(b) ~~An emergency standard promulgated pursuant to section 95-131(e) of the act shall be considered issued at the time when the standard is officially published in newspapers of general circulation as specified in 13 NCAC 7B .0504. The time of official publishing in the newspapers of general circulation as specified in Rule .0504 of this Section is established for the purpose of determining the prematurity, timeliness, or lateness of petitions for judicial review.~~

(c) ~~If the commissioner wishes to utilize the advisory council on any of the proposals as permitted by section 95-131 of the act, he shall afford interested persons an opportunity to inspect and copy any recommendations of the advisory~~

council within a reasonable time before the commencement of any hearing which may be held under this section, or before the termination of the period for the submission of written comments whenever an informal hearing is not initially noticed under Rule .0506 of this Section.

(d) Section 95-131(e) requires that any standard must be promulgated following the rulemaking proceeding within six months after the publication of the emergency standard. Because of the shortness of this period, the conduct of the proceeding shall be expedited to the extent practicable.

(e) Rule .0509(d) of this Section does not apply to the state's adoption by reference pursuant to section 95-131(a) of rules or regulations identical to those adopted by the U.S. Department of Labor, Occupational Safety and Health Administration.

Statutory Authority G.S. 95-131.

.0506 HEARINGS

(a) Type of Hearings

(1) The legislative history of section 95-131 indicates that the Legislature intended informal rather than formal rulemaking procedures to apply. The informality of the proceedings is also suggested by the fact that section 95-131(b) permits the making of a decision on the basis of written comments alone (unless an objection to a rule is made and a hearing is requested), the use of the advisory council and the inherent legislative nature of the tasks involved. For these reasons, the proceeding pursuant to this Rule shall be informal.

(2) The oral hearing shall be legislative in type. However, fairness may require an opportunity for cross-examination on crucial issues. The presiding officer is empowered to permit cross-examination under such circumstances. The essential intent is to provide an opportunity for effective oral presentation by interested persons which can be carried out with expedition and in the absence of rigid procedures which might unduly impede or protract the rulemaking process.

(b) Although any hearing shall be informal and legislative in type, this part is intended to provide more than the bare essentials of informal rulemaking. The additional requirements are the following:

- (1) The presiding officer shall be the commissioner or a hearing officer appointed by the commissioner.
- (2) The presiding officer shall provide an opportunity for cross-examination on crucial issues.
- (3) The hearing shall be reported verbatim, and a transcript shall be available to any interested person on such terms as the presiding officer may provide.

Statutory Authority G.S. 95-131.

.0507 POWERS OF PRESIDING OFFICER

The officer presiding at a hearing shall have all the powers necessary or appropriate to conduct a fair and full hearing, including the powers:

- (1) to regulate the course of the proceedings;
- (2) to dispose of procedural requests, objections, and matters;
- (3) to confine the presentations to the issues specified in the notices of hearing, or, where no issues are specified, to matters pertinent to the proposed rule;
- (4) to regulate the conduct of those present at the hearing by appropriate means;
- (5) in his discretion, to permit cross-examination of any witness;
- (6) to take official notice of material facts not appearing in the evidence in the record, so long as parties are entitled, on timely request, to an opportunity to show the contrary; and
- (7) in his discretion, to keep the record open for a reasonable stated time to receive written recommendations and supporting reasons, and additional data, views, and arguments from any person who has participated in the oral proceeding.

Statutory Authority G.S. 95-131.

.0508 CERTIFICATION OF THE RECORD OF A HEARING

Upon completion of the oral presentations, the transcript thereof, together with written submissions on the proposed rule, exhibits filed during the hearing, and all posthearing comments, recommendations, and supporting reasons shall be certified by the officer presiding at the hearing. A copy will be retained by the Director of the Office of Occupational Safety and Health.

Statutory Authority G.S. 95-131.

.0509 DECISION

(a) Time for Decision

- (1) Within 60 days after the expiration of the period provided for the submission of written data, views, and arguments on a proposed rule on which no hearing is held, or within 60 days after the certification of the record of a hearing, the commissioner shall publish in the newspapers specified in Rule .0504 of this Section, either an appropriate rule promulgating, modifying, or revoking a standard or determination that such a rule should not be issued. The action of the commissioner shall be taken after consideration of all relevant matters presented in written submissions and in any hearings held under this Section.

- (2) A determination that a rule should not be issued on the basis of existing relevant matter may be accompanied by an invitation for the submission of additional data, views, or arguments from interested persons on the issue or issues involved. In which event, an appropriate rule or other determination shall be made within 60 days following the end of the period allowed for the submission of the additional comments.

(b) Any rule or standard adopted under Rule .0504(a) of this Section shall incorporate a concise general statement of its scope and purpose. The statement is not required to include specific and detailed findings and conclusions of the kind customarily associated with formal proceedings. However, the statement will show significant issues which have been faced, and will articulate their solution.

(c) Where the advisory council has been utilized in the formulation of a proposed rule, the commissioner may seek the advice of the advisory council as to the disposition of the proceeding. In giving advice to the commissioner, the advisory council shall consider all matters presented. The advice of the advisory council shall take the form of written recommendations to be submitted to the commissioner within a period to be prescribed by him. When the recommendations are contained in the transcript of the meeting of the advisory council, they shall be in summary form.

(d) A rule promulgating, modifying, or revoking a standard, or a determination that a rule should not be promulgated, shall be considered issued at the time when the rule or determination is officially published in newspapers of general

circulation as specified in Rule .0504 of this Section. The time of official publishing in newspapers of general circulation is established for the purpose of determining the prematurity, timeliness, or lateness of petitions for judicial review.

(e) Subsection (d) of this Rule does apply to the state's adoption by reference pursuant to section 95-131(a) of rules or regulations identical to those adopted by the U.S. Department of Labor, Occupational Safety and Health Administration.

Statutory Authority G.S. 95-131.

SECTION .0700 - STATE ADVISORY COUNCIL ON OCCUPATIONAL SAFETY AND HEALTH

.0703 TERMS OF MEMBERSHIP

Each member of the council shall serve a term of four years. No member shall serve consecutive terms. Members may serve more than one term and such terms may be consecutive. The terms of the members shall be staggered. In the case of the members representing the private sector, two members will serve parallel terms. The chairman of the council shall not serve more than two years in that capacity. be appointed for a term of two years and may be reappointed. The past chairman shall serve as an ex officio member for one year in an advisory capacity to the chairman. The past chairman shall have no voting power. Each member of the council shall serve his full term unless he resigns or becomes unable to serve in the judgement of the Commissioner of Labor because of disability or because he ceases to be qualified to serve on the council because he is found by the Commissioner of Labor no longer to meet the representational requirements of the act. In such cases the Commissioner of Labor may appoint for the remainder of the unexpired term a new member who meets the same representational requirements, and is designated in the manner of his predecessor.

Statutory Authority G.S. 95-134.

SECTION .0800 - CONSULTATIVE SERVICES

.0801 PURPOSE AND SCOPE

Consultative services, as distinguished from inspections, are performed by OSHA consultants primarily for educational purposes to encourage and assist employers in achieving voluntary

compliance, and to assist in hazard identification and evaluation. Such services shall consist of educational, technical, and promotional advice given to an employer or to trade associations, professional societies, unions, educational institutions and public groups. Safety and health handouts and promotional materials may be used to help educate employers and employees regarding the act and the standards regulations.

Statutory Authority G.S. 95-133.

.0802 PROCEDURE

Safety officers cannot provide consultative services; consultation shall be by consultants only. If an employer requests consultative services, he shall be told that he should request consultative services by contacting the Director of the Consultative Services Division. Consultative services to public groups shall be performed on a priority established with the approval of the Director of OSHA.

Statutory Authority G.S. 95-133.

.0803 DIRECTOR'S DUTIES AND RESPONSIBILITIES

(a) *Duties.* The director performs those duties as outlined by the Director of the Occupational Safety and Health Division. He plans, organizes, and coordinates the work of staff consultants in interpreting to employers and employees the application of standards, program philosophies, operational procedures, and recordkeeping requirements required by the North Carolina Occupational Safety and Health Act of 1973.

(b) *Responsibilities.* The director, and his staff, works with industrial associations, governmental, municipal, and agricultural organizations in identifying problem areas and consultative needs in meeting compliance obligations under the act and to provide educational and engineering assistance for hazard identification and evaluation.

Statutory Authority G.S. 95-133.

.0804 IMMINENT DANGER AND SERIOUS CONDITIONS

(a) If a consultant encounters an imminent danger or serious condition during an inspection, it is his duty to inform the employer of the condition and suggest immediate steps be taken to remove the employees from the danger area. The consultant will inform the supervision at the establishment of the hazard, and follow through to

the highest level of management if there is not satisfactory abatement. If satisfactory abatement is still not achieved, the consultant will inform the consultant's supervisor. The consultant's supervisor will then contact the establishment's management and try to secure abatement. If this effort does not achieve abatement, the consultant supervisor will contact the Director of the OSHA Consultative Services Section who will follow the same procedure in contacting the establishment's management as did the consultant supervisor. If the Director of OSHA Consultative Services is unable to secure abatement, he will contact the Director of NC OSHA who shall take enforcement action necessary to secure abatement. All the above noted actions necessary to be taken will be achieved on the same day the alleged condition(s) is observed.

(b) *Private Sector.* The enforcement action taken for "conditions presenting substantial probability that death or serious physical harm could result" will include inspections by compliance personnel with citations issued as appropriate and assignment of abatement periods as appropriate. Imminent danger situations will include the obtaining of court injunctions to achieve abatement if necessary and will also include compliance inspection and issuance of citations as appropriate. Penalties also will be proposed in the private sector as appropriate and in accordance with enforcement procedures. Follow up inspections will be conducted in all such cases to assure abatement has been accomplished.

(c) *Public Sector.* The enforcement action taken for "conditions presenting substantial probability that death or serious physical harm could result" will include inspection by consultation personnel with citation (Notice of Violation) issued as appropriate and assignment of abatement periods as appropriate. Imminent danger situations will include the obtaining of court injunctions to achieve abatement if necessary and will also include the issuance of citations (Notice of Violation) as appropriate. Follow up inspections will be conducted in all such cases to assure abatement has been accomplished. No penalties will be proposed in the public sector.

Statutory Authority G.S. 95-133.

SECTION .0900 - PUBLIC AGENCY OSHA PROGRAMS

.0901 PURPOSE

The purpose of the public agency safety program

is to reduce occupational injuries and illnesses among employees of public agencies within North Carolina. The General Assembly of North Carolina assigned the N.C. Department of Labor as the designated agency to administer the Occupational Safety and Health Act of North Carolina. In accepting this responsibility, the Commissioner of Labor intends to assist and support all state, city, and county governmental agencies in planning and developing safety programs designed to reduce the likelihood of accidents in these agencies.

Statutory Authority G.S. 95-148.

.0902 SCOPE

Programs are created to service and protect state and other governmental employees of the State of North Carolina. The Federal Occupational Safety and Health Act and parallel state legislation (G.S. 95-126) greatly expand the Commissioner of Labor's responsibility for the safety of state government employees.

Statutory Authority G.S. 95-148.

.0903 POLICY

(a) Complaints. Complaints from state, city, county, and municipal employees must be processed. When a complaint is received from a state, city, or county employee, either by a safety officer or other official, it will be directed to the Director, OSHA Division, N.C. Department of Labor, Raleigh, N.C. 27611.

(b) Coverage. The state plan includes a program that will assure a safety and health plan for all employees of public agencies of the state and its political divisions.

Statutory Authority G.S. 95-148.

.0904 AGENCY RESPONSIBILITIES

The head of each administrative department, commission, board, division, or other agency of the state and of counties, cities, towns, and subdivisions of government shall comply with the requirements of G.S. 95-148 and in addition shall:

- (1) appoint a qualified person to develop and be responsible for his agency's safety program;
- (2) develop a safety plan to include a program of self administration of voluntary compliance with OSHA standards in cooperation with the North Carolina Department of Labor.

The annual report required by G.S. 95-148(6) shall be made to the commissioner by April of each year.

Statutory Authority G.S. 95-148.

.0905 ADDITIONAL INVOLVEMENT OF THE OSHA DIVISION

(a) Accidents. In the event of an accident(s) involving less than five employees of the public sector, and resulting in a non fatal injury, the OSHA division may assign a division safety officer to investigate the accident to determine the cause. Normally, the agency serving as the employer of the employee involved in the accident will appoint an investigating officer.

(b) Fatality/Catastrophy. In the event an accident involves five or more employees hospitalized or a fatality, the OSHA division will be prepared to assist in the investigation. The public agencies will normally be responsible for conducting the investigation, and at the conclusion of the inspection, the agencies will submit a report of their findings to the OSHA division. The OSHA division may conduct an investigation at the discretion of the director.

Statutory Authority G.S. 95-148.

SECTION .1000 - DISCLOSURE AND PUBLICITY

.1001 DISCLOSURE

(a) Policy. The department's policy regarding the disclosure of documents in investigative and other files is governed by Chapter 132 of the North Carolina General Statutes. Specific guidelines for the application of this policy to OSHA division files are set forth in this Rule. It should be emphasized that our policy is to disclose all documents to which the public is entitled under North Carolina statutory provisions; at the same time, great care should be taken to assure that documents which are not disclosable are kept confidential since disclosure of such documents may seriously prejudice the prosecution of cases and of the occupational safety and health program.

(b) Specific Guidelines

- (1) During the investigatory stage, before any citation is issued or a court proceeding initiated, Prior to the issuance of a citation, the contents and copies of the case file, including any complaints, samples, photographs, testing results, trade secrets, and the

narrative of the investigator's report, are not to be disclosed. ~~This is to prevent any private party from obtaining indirectly any earlier or greater access to case files than he would obtain directly in any subsequent litigation or adjudicatory proceeding.~~

- (2) After a citation and notice of proposed penalty have been issued and received by an employer, they are disclosable, upon request, ~~after the contestment period has expired.~~ Disclosure will be issued by the director or ~~assistant director only.~~ his authorized representative. ~~It is not the intention, however, to distribute these documents generally. At this stage of the proceeding, other documents in the file, particularly the investigative/inspection reports, trade secrets, are not to be disclosed. Prior to the contestment deadline, no other file contents shall be disclosable.~~
- (3) If an employer or employee files a notice of contest respecting a citation, the case file (except for the citation and proposed penalty), ~~continues not to be disclosable.~~ shall not be disclosable until a final order is issued and all further appeals have expired. The disclosure of documents in proceedings before the OSHA Safety and Health Review Board will take place in accordance with the rules ~~or of~~ evidence of the Safety and Health Review Board, and will be handled by the legal counselor. Similarly, the case file ~~is not to be disclosed if court action is initiated; for example, in imminent danger cases or employee discrimination cases.~~
- (4) Case files are to be disclosed, upon written request, in the following situations:
 - (A) if a determination is made that no citation will be issued and that no court action will be ~~initiated; however, if initiated, unless~~ further inspection is contemplated, in which case the file should shall not be disclosed until a final decision is made not to issue a citation; and
 - (B) if no notice of contest is filed within the statutory period, or if a notice of contest is filed but a settlement is

reached, the notice is withdrawn, or the case is otherwise closed.

- (5) ~~Even where a case file is generally disclosable, certain portions of the file are not to be disclosed. Specifically, the following types of information shall be withheld:~~
 - (A) ~~those containing trade secret information;~~
 - (B) ~~interagency or intra-agency documents or memoranda not containing factual information;~~
 - (C) ~~personnel or medical files or other confidential information;~~
 - (D) ~~statements by informers.~~
- (5) The following information contained in a releasable case file shall not be released at any time:
 - (A) Trade secrets;
 - (B) Personnel or medical files unless permission is granted for release;
 - (C) Complainant and witness names or statements unless permission is granted for release; and
 - (D) Interagency or intra-agency documents otherwise protected by law.

~~Because the determinations as to which specific documents should be withheld often raises difficult issues, the legal counselor should~~ Legal counsel may be consulted in unique situations before any case file is released. He should and may examine the file and decide designate the specific documents or portions of documents which should not to be disclosed.
- (6) Documents which are matters of public record may be disclosed at any time; for example, pleadings and briefs filed with the OSHA Review Board or the courts.

Statutory Authority G.S.; 95-129; 95-136(g).

.1002 PUBLICITY ON ENFORCEMENT ACTIVITIES

(a) ~~General Policy. All publicity must be personally approved by the commissioner before being released. The purpose of publicity on enforcement activities is to foster compliance with requirements of the act by making it clear to employers that it is the intention of the department to take appropriate enforcement action when violations occur. It is not our intention, however,~~

to use publicity to harass or embarrass employers, or to try cases in the press. Because of the sensitive nature of this area, great care should be taken at all times in determining appropriate publicity action.

(b) When Publicity is Appropriate. Publicity may be appropriate in the following situations if authorized by the commissioner:

- (1) Where court proceedings are initiated in imminent danger cases;
- (2) Where willful or repeated citations are issued;
- (3) Where matters are referred to the N.C. Department of Justice for criminal prosecution; for example, willful violations resulting in the death of an employee;
- (4) Where court proceedings are initiated for alleged discrimination against employees;
- (5) Where notice of failure to abate is issued and daily penalties are proposed;
- (6) In catastrophe and major accident investigations;
- (7) Publicity is not required in any of the situations described in Part (b) of this Rule. The question as to whether there would be publicity in a particular situation is always a matter of judgment by the commissioner in accordance with the procedures discussed in Part (e) of this Rule. There normally will be no publicity concerning citations (other than citations for willful or repeated violations) and proposed penalties issued to an employer.

(c) Content of Publicity

- (1) A news release is the appropriate type of publicity in most situations. The news release should include only matters contained in the citations and proposed penalties or in pleadings, briefs or other public documents filed with the courts or the OSHA Review Board. In no case should the news release include any facts obtained from case files.
- (2) Professional judgment should be used in assuring that the release does not include any extraneous material that would tend to overdramatize the situation or otherwise go beyond the bounds of discretion.
- (3) Television appearances or public statements may sometimes be

appropriate. In such appearances and statements, the guidelines in Part (c) of this Rule for the content of publicity are applicable.

- (4) If inquiries are received concerning an investigation or inspection in progress, the only information to be disclosed is a general statement that the department has undertaken an investigation of the matter.

- (5) In catastrophe and major accident investigations, publicity would normally refer only to the OSHA division's presence in the matter.

(d) Authorization to Issue News Release. Determination as to appropriate publicity and the specific content of the publicity should be made by the commissioner in consultation with the legal counselor.

(e) Timing of News Release

- (1) Where the news release is based on the issuance of a citation, the director shall ascertain that the employer has in fact actually received the citation prior to the issuance of such news release. This means that the director would have received the returned receipt, where the citation has been sent by certified or registered mail, or that other facts are available to the director indicating receipt by the employer.
- (2) In the case of a news release based on the institution of court proceeding, the director shall, in coordination with the legal counselor, ascertain that the court proceeding has in fact been instituted and that the employer has been served with appropriate pleadings before the commissioner will authorize issuance of the release.

Statutory Authority G.S. 95-129; 95-136(g).

1003 RULES CONCERNING OSHA ACCESS TO EMPLOYEE MEDICAL RECORDS

(a) General Policy. OSHA access to employee medical records will in certain circumstances be important to the agency's performance of its statutory functions. Medical records, however, contain personal details concerning the lives of employees. Due to the substantial personal privacy interests involved, OSHA authority to gain access to personally identifiable employee medical information will be exercised only after the agency

has made a careful determination of its need for this information, and only with appropriate safeguards to protect individual privacy. Once this information is obtained, OSHA examination and use of it will be limited to only that information needed to accomplish the purpose for access. Personally identifiable employee medical information will be retained by OSHA only for so long as needed to accomplish the purpose for access, will be kept secure while being used, and will not be disclosed to other agencies or members of the public except in narrowly defined circumstances. This Section establishes procedures to implement these policies.

(b) Scope and Application

- (1) Except as provided in Subparagraphs (b)(3) (b)(6) of this Rule, this Section applies to all requests by OSHA personnel to obtain access to records in order to examine or copy personally identifiable employee medical information, whether or not pursuant to the access provisions of 29 C.F.R. 1910.20(e). (See 13 NCAC 7C .0101.)
- (2) For the purposes of this Section, "personally identifiable employee medical information" means employee medical information accompanied by either direct identifiers (name, address, social security number, payroll number, etc.) or by information which could reasonably be used in the particular circumstances indirectly to identify specific employees (e.g., exact age, height, weight, race, sex, date of initial employment, job title, etc.).
- (3) This Section does not apply to OSHA access to, or the use of, aggregate employee medical information or medical records on individual employees which is not in a personally identifiable form. This Section does not apply to records required by 29 C.F.R. Part 1904 and 13 NCAC 7B .0300, to death certificates, or to employee exposure records, including biological monitoring records treated by 29 C.F.R. 1910.20(e)(5) or by specific occupational safety and health standards as exposure records.
- (4) This Section does not apply where OSHA compliance personnel conduct an examination of employee medical records solely to verify employer compliance with the medical

surveillance recordkeeping requirements of an occupational safety and health standard, or with 29 C.F.R. 1910.20. An examination of this nature shall be conducted on site and, if requested, shall be conducted under the observation of the recordholder. The OSHA compliance personnel shall not record and take off site any information from medical records other than documentation of the fact of compliance or non-compliance.

- (5) This Section does not apply to agency access to, or the use of, personally identifiable employee medical information obtained in the course of litigation.
 - (6) This Section does not apply where a written directive by the Director, Office of Occupational Safety and Health authorizes appropriately qualified personnel to conduct limited reviews of specific medical information mandated by an occupational safety and health standard, or of specific biological monitoring test results.
 - (7) Even if not covered by the terms of this Section, all medically related information reported in a personally identifiable form shall be handled with appropriate discretion and care befitting all information concerning specific employees. There may, for example, be personal privacy interests involved which militate against disclosure of this kind of information to the public (See 29 C.F.R. 70.26 and 70.a3.)
- (e) Responsible Persons
- (1) Director, Office of Occupational Safety and Health, North Carolina Department of Labor shall be responsible for the overall administration and implementation of the procedures contained in this Section, including making final OSHA determinations concerning:
 - (A) access to personally identifiable employee medical information [Paragraph (d)], and
 - (B) inter-agency transfer or public disclosure of personally identifiable employee medical information [Paragraph (m)].
 - (2) OSHA Medical Records Officer. The Director shall designate an OSHA official with experience or training in

the evaluation, use, and privacy protection of medical records to be the OSHA Medical Records Officer. The OSHA Medical Records Officer shall report directly to the Director on matters concerning this Section and shall be responsible for:

- (A) making recommendations to the Director as to the approval or denial of written access orders [Paragraph (d)];
- (B) assuring that written access orders meet the requirements of Subparagraphs (d)(2) and (d)(3) of this Section;
- (C) responding to employee, collective bargaining agent, and employer objections concerning written access orders [Paragraph (f)];
- (D) regulating the use of direct personal identifiers [Paragraph (g)];
- (E) regulating internal agency use and security of personally identifiable employee medical information [Paragraphs (h)-(j)];
- (F) assuring that the results of agency analyses of personally identifiable medical information are, where appropriate, communicated to employees [Paragraph (k)];
- (G) preparing an annual report of OSHA's experience under this Section [Subparagraph (1)]; and
- (H) assuring that advance notice is given of intended inter-agency transfers or public disclosures [Paragraph (m)].

(3) ~~Principal OSHA Investigator.~~ The principal OSHA investigator shall be the OSHA employee in each instance of access to personally identifiable employee medical information who is made primarily responsible for assuring that the examination and use of this information is performed in the manner prescribed by a written access order and the requirements of this Section [Paragraphs (d)-(m)]. When access is pursuant to a written access order, the principal OSHA investigator shall be professionally trained in medicine, public health, or allied fields (epidemiology, toxicology, industrial hygiene, biostatistics, environmental health, etc.).

(d) ~~Written Access Orders~~

(1) ~~Requirement for Written Access Order.~~ Except as provided in Subparagraph (d)(4) of this Paragraph, each request by an OSHA representative to examine or copy personally identifiable employee medical information contained in a record held by an employer or other recordholder shall be made pursuant to a written access order which has been approved by the Director upon the recommendation of the OSHA medical records officer. If deemed appropriate, a written access order may constitute, or be accompanied by, an administrative subpoena.

(2) ~~Approval Criteria for Written Access Order.~~ Before approving a written access order, the Director and the OSHA Medical Records Officer shall determine that:

- (A) The medical information to be examined or copied is relevant to a statutory purpose and there is a need to gain access to this personally identifiable information;
- (B) The personally identifiable medical information to be examined or copied is limited to only that information needed to accomplish the purpose for access; and
- (C) The personnel authorized to review and analyze the personally identifiable medical information are limited to those who have a need for access and have appropriate professional qualifications.

(3) ~~Content of Written Access Order.~~ Each written access order shall state with reasonable particularity:

- (A) the statutory purposes for which access is sought;
- (B) a general description of the kind of employee medical information that will be examined and why there is a need to examine personally identifiable information;
- (C) whether medical information will be examined on-site, and what type of information will be copied and removed off-site;
- (D) the name, address, and phone number of the principal OSHA investigator and the names of any other authorized persons who are expected to review

- and analyze the medical information;
- (E) ~~the name, address, and phone number of the OSHA medical records officer; and~~
- (F) ~~the anticipated period of time during which OSHA expects to retain the employee medical information in a personally identifiable form.~~
- (4) ~~Special Situations. Written access orders need not be obtained to examine or copy personally identifiable employee medical information under the following circumstances:~~
 - (A) ~~Specific Written Consent. If the specific written consent of an employee is obtained pursuant to 29 C.F.R. 1910.20(e)(2)(ii), and the agency or an agency employee is listed on the authorization as the designated representative to receive the medical information, then a written access order need not be obtained. Whenever personally identifiable employee medical information is obtained through specific written consent and taken off site, a principal OSHA investigator shall be promptly named to assure protection of the information, and the OSHA medical records officer shall be notified of this person's identity. The personally identifiable medical information obtained shall thereafter be subject to the use and security requirements of Paragraphs (h) (m) of this Section.~~
 - (B) ~~Physician Consultations. A written access order need not be obtained where an OSHA staff or contract physician consults with an employer's physician concerning an occupational safety or health issue. In a situation of this nature, the OSHA physician may conduct on-site evaluation of employee medical records in consultation with the employer's physician, and may make necessary personal notes of his or her findings. No employee medical records, however, shall be taken off site in the absence of a written access order or the specific written consent of an employee, and no notes of personally identifiable employee medical information made by the OSHA~~

~~physician shall leave his or her control without the permission of the OSHA medical records officer.~~

~~(e) Presentation of Written Access Order and Notice to Employees~~

- (1) ~~The principal OSHA investigator, or someone under his or her supervision, shall present at least two copies each of the written access order and an accompanying cover letter to the employer prior to examining or obtaining medical information subject to a written access order. At least one copy of the written access order shall not identify specific employees by direct personal identifier. The accompanying cover letter shall summarize the requirements of this Section and indicate the questions or objections concerning the written access order may be directed to the principal OSHA investigator or to the OSHA medical records officer.~~
- (2) ~~The principal OSHA investigator shall promptly present a copy of the written access order (which does not identify specific employees by direct personal identifier) and its accompanying cover letter to each collective bargaining agent representing employees whose medical records are subject to the written access order.~~
- (3) ~~The principal OSHA investigator shall indicate that the employer must promptly post a copy of the written access order which does not identify specific employees by direct personal identifier, as well as post its accompanying cover letter [See 29 C.F.R. 1910.20(e)(3)(ii).]~~
- (4) ~~The principal OSHA investigator shall discuss with any collective bargaining agent and with the employer the appropriateness of individual notice to employees affected by the written access order. Where it is agreed that individual notice is appropriate, the principal OSHA investigator shall promptly provide to the employer an adequate number of copies of the written access order (which does not identify specific employees by direct personal identifier) and its accompanying cover letter to enable the employer either to individually notify~~

~~each employee or to place a copy in each employee's medical file.~~

~~(f) Objections Concerning a Written Access Order. All employee, collective bargaining agent, and employer written objections concerning access to records pursuant to a written access order shall be transmitted to the OSHA medical records officer. Unless the agency decides otherwise, access to the records shall proceed without delay notwithstanding the lodging of an objection. The OSHA medical records officer shall respond in writing to each employee's and collective bargaining agent's written objection to OSHA access. Where appropriate, the OSHA medical records officer may revoke a written access order and direct that any medical information obtained by it be returned to the original recordholder or destroyed. The principal OSHA investigator shall assure that such instructions by the OSHA medical records officer are promptly implemented.~~

~~(g) Removal of Direct Personal Identifiers. Whenever employee medical information obtained pursuant to a written access order is taken off-site with direct personal identifiers included, the principal OSHA investigator shall, unless otherwise authorized by the OSHA medical records officer, promptly separate all direct personal identifiers from the medical information, and code the medical information and the list of direct identifiers with a unique identifying number for each employee. The medical information with its numerical code shall thereafter be used and kept secured as though still in a directly identifiable form. The principal OSHA investigator shall also hand deliver or mail the list of direct personal identifiers with their corresponding numerical codes to the OSHA medical records officer. The OSHA medical records officer shall thereafter limit the use and distribution of the list of coded identifiers to those with a need to know its contents.~~

~~(h) Internal Agency Use of Personally Identifiable Employee Medical Information~~

~~(1) The principal OSHA investigator shall in each instance of access be primarily responsible for assuring that personally identifiable employee medical information is used and kept secured in accordance with this Section.~~

~~(2) The principal OSHA investigator, the OSHA medical records officer, the director, and any other authorized person listed on a written access order may permit the examination or use of personally identifiable employee~~

~~medical information by agency employees and contractors who have a need for access, and appropriate qualifications for the purpose for which they are using the information. No OSHA employee or contractor is authorized to examine or otherwise use personally identifiable employee medical information unless so permitted.~~

~~(3) Where a need exists, access to personally identifiable employee medical information may be provided to attorneys in the Office of the Attorney General of North Carolina, and to agency contractors who are physicians or who have contractually agreed to abide by the requirements of this Section and implementing agency directives and instructions.~~

~~(4) OSHA employees and contractors are only authorized to use personally identifiable employee medical information for the purposes for which it was obtained, unless the specific written consent of an employee is obtained as to a secondary purpose, or the procedures of Paragraphs (d) (g) of this Section are repeated with respect to the secondary purpose.~~

~~(5) Whenever practicable, the examination of personally identifiable employee medical information shall be performed on-site with a minimum of medical information taken off-site in a personally identifiable form.~~

~~(i) Security Procedures~~

~~(1) Agency files containing personally identifiable employee medical information shall be segregated from other agency files. When not in active use, files containing this information shall be kept secured in a locked cabinet or vault.~~

~~(2) The OSHA medical records officer and the principal OSHA investigator shall each maintain a log of uses and transfers of personally identifiable employee medical information and lists of coded direct personal identifiers, except as to necessary uses by staff under their direct personal supervision.~~

~~(3) The photocopying or other duplication of personally identifiable employee medical information shall be kept to the~~

minimum necessary to accomplish the purposes for which the information was obtained.

- (4) ~~The protective measures established by this Section apply to all worksheets, duplicate copies, or other agency documents containing personally identifiable employee medical information.~~

- (5) ~~Intra agency transfers or personally identifiable employee medical information shall be by hand delivery, United States mail, or equally protective means. Inter office mailing channels shall not be used.~~

(j) ~~Retention and Destruction of Records~~

- (1) ~~Consistent with OSHA records disposition programs, personally identifiable employee medical information and lists of coded direct personal identifiers shall be destroyed or returned to the original recordholder when no longer needed for the purposes for which they were obtained.~~

- (2) ~~Personally identifiable employee medical information which is currently not being used actively but may be needed for future use shall be transferred to the OSHA medical records officer. The OSHA medical records officer shall conduct an annual review of all centrally held information to determine which information is no longer needed for the purposes for which it was obtained.~~

(k) ~~Results of an Agency Analysis Using Personally Identifiable Employee Medical Information. The OSHA medical records officer shall, as appropriate, assure that the results of an agency analysis using personally identifiable employee medical information are communicated to the employees whose personal medical information was used as a part of the analysis.~~

(l) ~~Annual Report. The OSHA medical records officer shall on an annual basis review OSHA's experience under this Section during the previous year, and prepare a report to the Director which shall be made available to the public. This report shall discuss;~~

- (1) ~~the number of written access orders approved and a summary of the purposes for access;~~
- (2) ~~the nature and disposition of employee, collective bargaining agent, and employer written objections concerning~~

~~OSHA access to personally identifiable employee medical information; and~~

- (3) ~~the nature and disposition of requests for inter agency transfer or public disclosure of personally identifiable employee medical information.~~

(m) ~~Inter agency Transfer and Public Disclosures~~

- (1) ~~Personally identifiable employee medical information shall not be transferred to another agency or office outside of OSHA (other than to the Office of the Attorney General of North Carolina) or disclosed to the public (other than to the affected employee or the original recordholder) except when required by law or when approved by the Director.~~

- (2) ~~Except as provided in Subparagraph (m)(3) of this Rule, the Director shall not approve a request for an inter agency transfer of personally identifiable employee medical information, which has not been consented to by the affected employees, unless the request is by a public health agency which:~~

- (A) ~~needs the requested information in a personally identifiable form for a substantial public health purpose;~~
- (B) ~~will not use the requested information to make individual determinations concerning affected employees which could be to their detriment;~~
- (C) ~~has regulations or established written procedures providing protection for personally identifiable medical information substantially equivalent to that of this Section; and~~
- (D) ~~satisfies an exemption to the Privacy Act to the extent that the Privacy Act applies to the requested information [See 5 U.S.C. 552a(b); 29 C.F.R. 70a.3].~~

- (3) ~~Upon the approval of the Director, personally identifiable employee medical information may be transferred to:~~

- (A) ~~the National Institute for Occupational Safety and Health (NIOSH), and~~
- (B) ~~the Department of Justice or the North Carolina Attorney General when necessary with respect to a specific action under the Occupational Safety and Health Act.~~

- (4) ~~The Director shall not approve a request for public disclosure of employee medical information containing direct personal identifiers unless there are compelling circumstances affecting the health or safety of an individual.~~
- (5) ~~The Director shall not approve a request for public disclosure of employee medical information which contains information which could reasonably be used indirectly to identify specific employees when the disclosure would constitute a clearly unwarranted invasion of personal privacy [See 5 U.S.C. 552(b)(6); 29 C.F.R. 70.26].~~
- (6) ~~Except as the inter-agency transfers to NIOSH or the Department of Justice or the Attorney General, the OSHA medical records officer shall assure that advance notice is provided to any collective bargaining agent representing affected employees and to the employer on each occasion that OSHA intends to either transfer personally identifiable employee medical information to another agency or disclose it to a member of the public other than to an affected employee. When feasible, the OSHA medical records officer shall take reasonable steps to assure that advance notice is provided to affected employees when the employee medical information to be transferred or disclosed contains direct personal identifiers.~~

Statutory Authority G.S. 95-129; 95-136(g).

SECTION .1100 - STANDARDS AND INSPECTIONS FORMS

.1101 PURPOSE

~~This Section is a listing of forms utilized by the enforcement bureau of the occupational safety and health division for enforcement of the North Carolina Occupational Safety and Health Act of 1973. All forms listed are available from the Occupational Safety and Health Division of the North Carolina Department of Labor, Raleigh, North Carolina 27601.~~

Statutory Authority G.S. 95-136.

.1102 SAFETY AND HEALTH REPORT

~~This is the OSHA-1 Form and is used whenever enforcement contact is made with an employer. The OSHA-1 includes, but is not limited to, name and address of establishment, general information on the worksite and process, type of inspection and evaluations of safety and health programs.~~

Statutory Authority G.S. 95-136.

.1103 WORKSHEET

~~This is the OSHA-1B Form, in two pages. It serves as the base for information that will be used in completing the OSHA-1, OSHA-2, and OSHA-3 as described in this Section. It is important that all analyses, and other data be either written on or attached to the OSHA-1B Form. The OSHA-1B includes, but is not limited to citation wording, a description of a hazard or violation, names of employees exposed, and proposed penalty calculations.~~

Statutory Authority G.S. 95-136.

.1104 NARRATIVE

~~This is the OSHA-1C Form, in two pages. Page one is used to record information relative to organized employee groups, authorized representatives of employees, management officials contacted, management representatives accompanying the safety officer or industrial hygienist on the walkaround inspection, and other employees contacted, if any. Page two is used to record closing conference summary, employer reaction, injury and illness data, evaluation of safety and health program, and comments of the safety officer.~~

Statutory Authority G.S. 95-136.

.1105 CITATION AND RELATED FORMS

(a) ~~Citation. This is the OSHA-2 Form. The citation is prepared from the safety officer's and industrial hygienist's OSHA-1B Form, and is used by the director to officially inform the employer of violations noted during the inspection. It is used for all types of citations except imminent danger. This form must be posted.~~

(b) ~~De Minimis Notice. This is the OSHA-2B Form. The de minimis notice covers those violations "not having a direct or immediate relationship to safety and health." The intent of the standard is that these are conditions which present no apparent hazard to employees' safety and health. The employer is not required to post a "de minimis notice." The employer is not~~

required to make any reports back to the director since corrective action is left to his discretion.

(e) ~~Transmittal Letter.~~ The OSHA 2C Form shall be used as a transmittal letter from the central office to the employer to accompany the "citation," OSHA 2 Form. The director or his delegated representative will sign the OSHA 2C.

(d) ~~Notification of Abatement.~~ This is the OSHA 2D Form. It is provided for the employers' convenience in notifying the occupational safety and health division of abatement.

Statutory Authority G.S. 95-136.

.1106 PENALTY FORMS

(a) ~~Notification of Proposed Penalty.~~ This is the OSHA 3 Form. The central office will complete these forms to notify employers of proposed penalties. If no penalty is proposed, the employer is notified by marking "no proposed penalties" on the OSHA 2C Form.

(b) ~~Notification of Failure to Correct Violation and of Proposed Additional Penalty.~~ This is the OSHA 3A Form. It is sent as a result of an employer's failure to abate a hazard previously cited. The OSHA 3A indicates the amount of proposed additional penalty.

Statutory Authority G.S. 95-136.

.1107 ACCIDENT INVESTIGATION REPORT

This is the OSHA 4 Form. It is used whenever a safety officer or industrial hygienist investigates an accident. It includes, but is not limited to, employee information, accident facts, and corrective action.

Statutory Authority G.S. 95-136.

.1108 WITNESS STATEMENT

The witness statement (Form OSHA 19) may be used in accident investigations and any other time documented statements are needed to more clearly describe a condition or situation. The witness statement includes, but is not limited to, name of employee and company, what safety training he received, a statement or fact concerning a condition or situation, and employee and witness signature.

Statutory Authority G.S. 95-136.

.1109 COMPLAINT

This is the OSHA 7 Form. It may be used by employees or representatives of employees to notify the occupational safety and health division of unsafe conditions and to request inspection of conditions. The OSHA 7 must be signed by the employee or employee representative, but the name, upon request, will be withheld from the employer.

Statutory Authority G.S. 95-136.

.1110 IMMINENT DANGER

The OSHA 8 Form is the means by which the safety officer or industrial hygienist officially informs the employer and the affected employees that an imminent danger exists. If an imminent danger is determined, the safety officer or industrial hygienist shall inform the affected employees and the employer of such danger by completing the OSHA 8 Form. This form shall be signed by the safety officer and posted at or near the area in which the exposed employees are working. A signed copy of the OSHA 8 Form will be attached to the OSHA 1 Form and kept in the case file of the central office.

Statutory Authority G.S. 95-136.

.1111 HAZARDS NOT COVERED BY A STANDARD

The OSHA 9 Form, "Hazards Not Covered by a Standard," is used for recommending new standards or for changes to existing standards promulgated, or adopted, by the Occupational Safety and Health Act. Recommendations sought include: additions, corrections, organization, deletions, format and related areas.

Statutory Authority G.S. 95-136.

.1113 POINT-OF-OPERATION INJURY REPORT

This is the OSHA 30 Form. It is required by 29 CFR 1910.217(g) and must be submitted to the occupational safety and health division of the North Carolina Department of Labor by employers whose employees are injured by mechanical power presses. It includes, but is not limited to, employer information, employee information and cause of accident.

Statutory Authority G.S. 95-136.

.1115 PHOTO RECORD

The photo record (OSHA 18) is used by the

safety officer or industrial hygienist to provide explanations of photographs taken on inspections. A photo record is usually supplemental to the OSHA 1B.

Statutory Authority G.S. 95-136.

.1116 INDUSTRIAL HYGIENE REFERRAL

The industrial hygiene referral (Form OSHA 14) is used by the safety officer to request additional investigation of chemical, physical, biological, or biochemical hazards. This form includes the names of the agents involved and the number of employees affected.

Statutory Authority G.S. 95-136.

.1117 HEARING CONSERVATION PROGRAM ANALYSIS

The OSHA 53 Form is used to evaluate survey data, hearing protection, educational programs and engineering controls implemented by an establishment exposing its employees to noise levels in excess of those specified in the OSHA standards.

Statutory Authority G.S. 95-136.

.1118 SKETCHES AND DIAGRAMS

The OSHA 23 Form is used for sketches and diagrams depicting situations or conditions and commonly accompanies an OSHA 1B.

Statutory Authority G.S. 95-136.

.1119 NOISE SURVEY DATA SHEET

The OSHA 69 Form is used to record noise level measurements and related information from noise level surveys.

Statutory Authority G.S. 95-136.

.1120 CALIBRATION LOG

The OSHA 80 Form is used to record calibration data such as name and serial number of instruments, time of calibration, condition of batteries and calibration frequencies.

Statutory Authority G.S. 95-136.

SECTION .1200 - CONSULTATIVE SERVICE FORMS

.1201 PURPOSE

This Section is a listing of forms utilized by the

consultative services section of the occupational safety and health division of the North Carolina Department of Labor when dealing with the public and private sectors. All forms are available from the Occupational Safety and Health Division of the North Carolina Department of Labor, Raleigh, North Carolina 27601.

Statutory Authority G.S. 95-126.

.1202 SAFETY AND HEALTH REPORT FORM

This is the OSHA 56 Form. The Safety and Health Report Form is used whenever contact is made by consultants with a public or private agency or division thereof. The OSHA 56 includes the name, pertinent data, and incidence rates of the agency.

Statutory Authority G.S. 95-126.

.1203 SURVEY REPORT

The OSHA 33 is the Survey Report. It includes a description of the violation, the standard violated, abatement date, and type of violation.

Statutory Authority G.S. 95-126.

.1204 NOTICE OF VIOLATION

This is the OSHA 2 Form. The OSHA 2 is used to officially notify the agency or department of violations noted during an inspection. The OSHA 2 includes the standard violated and the abatement date.

Statutory Authority G.S. 95-126.

.1205 NOTIFICATION OF ABATEMENT OF CITATION ITEMS

This is the OSHA 2D Form. This form is provided for the agency's or department's convenience in notifying the occupational safety and health division of abatement of citation items.

Statutory Authority G.S. 95-126.

.1206 NOTIFICATION OF FAILURE TO CORRECT A VIOLATION

This is the OSHA 54 Form. The OSHA 54 is sent as a result of a failure to correct a violation.

Statutory Authority G.S. 95-126.

.1207 NOTIFICATION OF ABATEMENT OF SERIOUS SURVEY HAZARDS

~~This is the OSHA 2E Form. This form is provided for the agency's or department's convenience in notifying the occupational safety and health division of the abatement of serious hazards found on consultative surveys.~~

Statutory Authority G.S. 95-126.

.1208 NOTIFICATION OF FAILURE TO CORRECT HAZARD

~~This is the OSHA 93 Form. This form is sent as a result of a failure to correct a serious hazard found on a consultative survey.~~

Statutory Authority G.S. 95-126.

SUBCHAPTER 7C - SAFETY AND HEALTH

SECTION .0100 - GENERAL INDUSTRY: CONSTRUCTION AND AGRICULTURE

.0101 GENERAL INDUSTRY

~~(a) The commissioner has adopted the Occupational Safety and Health Standards, Title 29 of the Code of Federal Regulations Part 1910, as the same appears in the 39th Volume of the Federal Register 23502-23838 (June 27, 1974), with the following additions, deletions and amendments:~~

~~(1) Subpart A - General:~~

~~(A) 29 CFR 1910.6, Incorporation by reference. Revision of Paragraph (a) 29 CFR 1910.6 as published in 49 FR (February 10, 1984) page 5321 and adopted by the North Carolina Department of Labor on June 1, 1984;~~

~~(B) Addition of new paragraph 29 CFR 1910.7 as published in 53 FR (April 12, 1988) pages 12120-12121 and addition of Appendix pages 12123-12125;~~

~~(C) Correction 29 CFR 1910.7 as published in 53 FR (May 11, 1988) page 16838.~~

~~(2) Subpart B - Adoption and Extension of Established Federal Standards:~~

~~(A) Longshoring and marine terminals 1910.16, addition of new paragraph 1910.16(b)(2)(ix) as published in 52 FR (September 25, 1987) page 36026;~~

~~(B) 29 CFR 1910.19, Special provisions for air contaminants:~~

~~(i) Acrylonitrile, emergency~~

~~temporary standard 29 CFR 1910.19 as published in 43 FR (January 17, 1978) page 2600 and adopted by the North Carolina Department of Labor on January 26, 1978;~~

~~(ii) Acrylonitrile, correction 29 CFR 1910.19 as published in 43 FR (June 30, 1978) page 28473 and adopted by the North Carolina Department of Labor on July 11, 1978;~~

~~(iii) Acrylonitrile, final rule 29 CFR 1910.19 as published in 43 FR (October 3, 1978) pages 45761-45819 and adopted by the North Carolina Department of Labor on October 13, 1978;~~

~~(iv) Lead, final rule 29 CFR 1910.19(g) as published in 43 FR (November 14, 1978) page 53007 and adopted by the North Carolina Department of Labor on November 22, 1978;~~

~~(v) Benzene, removal of paragraph 29 CFR 1910.19(d) as published in 46 FR (June 19, 1981) pages 32021-32022 and adopted by the North Carolina Department of Labor on July 13, 1981;~~

~~(vi) Ethylene oxide, addition of new paragraph (h) 29 CFR 1910.19 as published in 49 FR (June 22, 1984) page 25796 and adopted by the North Carolina Department of Labor on November 1, 1984;~~

~~(vii) Asbestos, tremolite, anthophyllite, and actinolite, revision as published in 51 FR (June 20, 1986), page 22733 and adopted by the North Carolina Department of Labor on July 21, 1986;~~

~~(viii) Formaldehyde, addition of new Paragraph (j) 29 CFR 1910.19 as published in 52 FR (December 4, 1987) page 46291.~~

~~(3) Subpart C - General Safety and Health Provisions, 29 CFR 1910.20, Access to employee exposure and medical records:~~

~~(A) Preservation of records, final rule (interim) 29 CFR 1910.20 as published in 43 FR (July 21, 1978) pages 31329-31331 and adopted by~~

- the North Carolina Department of Labor on July 25, 1978;
- (B) ~~Revision of rule and addition of Appendices A and B 29 CFR 1910.20 as published in 45 FR (May 23, 1980) pages 35277-35281 and adopted by the North Carolina Department of Labor on June 24, 1980;~~
- (C) ~~Corrections 29 CFR 1910 and 1913 as published in 45 FR (August 15, 1980) pages 54333-54334 and adopted by the North Carolina Department of Labor on October 13, 1980;~~
- (D) ~~Revision of 29 CFR 1910.20 as published in 53 FR (September 29, 1988) pages 38162-38168, and OMB clearance as announced at 53 FR (December 13, 1988) page 49981.~~
- (4) ~~Subpart D—Walking Working Surfaces, 29 CFR 1910.23, Guarding floor and wall openings and holes. Deletions from Paragraphs (a)(3)(ii), (a)(5), (a)(8)(ii) and (b)(1)(i) 29 CFR 1910.23 as published in 49 FR (February 10, 1984) page 5321 and adopted by the North Carolina Department of Labor on June 1, 1984.~~
- (5) ~~Subpart D—Walking Working Surfaces, 29 CFR 1910.24, Fixed industrial stairs. Revision of heading in Paragraph (g); deletions from Paragraphs (f) and (g); revocation of Paragraph (j) 29 CFR 1910.24 as published in 49 FR (February 10, 1984) page 5321 and adopted by the North Carolina Department of Labor on June 1, 1984.~~
- (6) ~~Subpart D—Walking Working Surfaces, 29 CFR 1910.25, Portable wood ladders. Deletions from Paragraph (d)(2)(xiv); revocation of Paragraphs (d)(2)(vi), (d)(2)(vii), (d)(2)(xvi) and (d)(2)(xviii) 29 CFR 1910.25 as published in 49 FR (February 10, 1984) page 5321 and adopted by the North Carolina Department of Labor on June 1, 1984.~~
- (7) ~~Subpart D—Walking Working Surfaces, 29 CFR 1910.26, Portable metal ladders. Deletions from Paragraphs (e)(2)(iv), (e)(2)(vi), (e)(3)(i), (e)(3)(iii) and (e)(3)(iv); revocation of Paragraphs (e)(2)(v), (e)(2)(vi)(b), and (e)(2)(vi)(e) 29 CFR 1910.26 as published in 49 FR (February 10, 1984) page 5321 and adopted by the North Carolina Department of Labor on June 1, 1984; and revision of Paragraph (e)(3)(viii) as published in 55 FR (August 6, 1990) page 32014.~~
- (8) ~~Subpart D—Walking Working Surfaces, 29 CFR 1910.28, Safety requirements for scaffolding. Deletions from Paragraph (u)(5); revocation of Paragraphs (a)(3) and (p)(1) 29 CFR 1910.28 as published in 49 FR (February 10, 1984) page 5321 and adopted by the North Carolina Department of Labor on June 1, 1984 and amended as published in 53 FR (April 12, 1988) page 12121.~~
- (9) ~~Subpart D—Walking Working Surfaces, 29 CFR 1910.30, Other working surfaces. Deletions from Paragraph (b)(2) 29 CFR 1910.30 as published in 49 FR (February 10, 1984) page 5322 and adopted by the North Carolina Department of Labor on June 1, 1984.~~
- (10) ~~Subpart E—Means of Egress, 29 CFR 1910.35, Definitions.~~
- (A) ~~Addition of Paragraphs (i) and (j) 29 CFR 1910.35 as published in 45 FR (September 12, 1980) page 60703 and adopted by the North Carolina Department of Labor on October 28, 1980;~~
- (B) ~~Amendment 29 CFR 1910.35 as published in 53 FR (April 12, 1988) page 12121.~~
- (11) ~~Subpart E—Means of Egress, 29 CFR 1910.37, Means of Egress, General. Revision of Paragraph (n) 29 CFR 1910.37 as published in FR (September 12, 1980) page 60703 and adopted by the North Carolina Department of Labor on October 28, 1980.~~
- (12) ~~Subpart E—Means of Egress, 29 CFR 1910.38, Specific Means of Egress requirements by occupancy. Employee emergency plans and fire prevention plans, deletion of existing heading and addition of a new 1910.38 29 CFR 1910.38 and published in 45 FR (September 12, 1980) pages 60703-60704 and adopted by the North Carolina Department of Labor on October 28, 1980.~~
- (13) ~~Subpart F—Powered Platforms, Manlifts and Vehicle Mounted Work Platforms,~~

- 29 CFR 1910.66, Powered Platforms for building maintenance. Revision as published in 54 FR (July 28, 1989) pages 31456-31477.
- (14) Subpart F Powered Platforms, Manlifts and Vehicle Mounted Work Platforms:
 - (A) 29 CFR 1910.67, Vehicle Mounted Elevating and Rotating Work Platforms, Revision of Paragraph (b) and addition of new Paragraph (c) as published in 40 FR (March 26, 1975) pages 13436-13450 and revision of Paragraph (b)(4) as published in 55 FR (August 6, 1990) page 32014; and
 - (B) 29 CFR 1910.68, Manlifts. Revisions of Paragraphs (b)(4) and (c)(5)(iv)(e) as published in 55 FR (August 6, 1990) page 32014.
- (15) Subpart F Powered Platforms, Manlifts and Vehicle Mounted Work Platforms, 29 CFR 1910.70, Standards organizations. Revision of 29 CFR 1910.70 as published in 40 FR (March 26, 1975) pages 13436-13450 and adopted by the North Carolina Department of Labor on April 15, 1975.
- (16) Subpart G Occupational Health and Environmental Control, 29 CFR 1910.93q:
 - (A) Exposure to vinyl chloride 29 CFR 1910.93q as published in 39 FR (October 4, 1974) pages 35890-35898 and adopted by the North Carolina Department of Labor on January 1, 1975;
 - (B) Corrections 29 CFR 1910.93q as published in 39 FR (December 3, 1974) page 41848 and adopted by the North Carolina Department of Labor on December 10, 1974;
 - (C) Effective date 29 CFR 1910.93q as published in 40 FR (March 25, 1975) page 13211 and adopted by the North Carolina Department of Labor on March 26, 1975.
- (17) Subpart G Occupational Health and Environmental Control, 29 CFR 1910.94, Ventilation:
 - (A) Revocation of Paragraphs (b)(2)(i) and (b)(2)(ii) and revision of Paragraph (b)(2) 29 CFR 1910.94 as published in 40 FR (June 9, 1975) pages 24521-24522 and adopted by the North Carolina Department of Labor on June 9, 1975;
 - (B) Deletions from Paragraph (d)(8)(iii) 29 CFR 1910.94 as published in 49 FR (February 10, 1984) page 5322 and adopted by the North Carolina Department of Labor on June 1, 1984;
 - (C) Amendment as published in 55 FR (August 6, 1990) page 32014.
- (18) Subpart G Occupational Health and Environmental Control, 29 CFR 1910.95, Occupational noise exposure:
 - (A) Hearing conservation amendment, Rule and Proposed Rule 29 CFR 1910.95 as published in FR (August 21, 1981) pages 42622-42639 and adopted by the North Carolina Department of Labor on December 1, 1981;
 - (B) Hearing conservation amendment, correction 29 CFR 1910.95 as published in FR (September 11, 1981) pages 45333-45334 and adopted by the North Carolina Department of Labor on December 1, 1981;
 - (C) Hearing conservation amendment, final rule 29 CFR 1910.95 as published in FR (March 8, 1983) pages 9737-9785 and adopted by the North Carolina Department of Labor on July 1, 1983;
 - (D) Hearing conservation amendment, corrections 29 CFR 1910.95 as published in FR (June 28, 1983) page 29687 and adopted by the North Carolina Department of Labor on October 1, 1983.
- (19) Subpart G Occupational Health and Environmental Control, 29 CFR 1910.99, Sources of Standards. Correction 29 CFR 1910.99 as published in 47 FR (June 11, 1982) page 25323 and adopted by the North Carolina Department of Labor on October 1, 1982.
- (20) Subpart H Hazardous Materials:
 - (A) 29 CFR 1910.103, Hydrogen:
 - (i) Revision as published in 53 FR (April 12, 1988) page 12121.
 - (ii) Amendment as published in 55 FR (August 6, 1990) page 32015.
 - (B) 29 CFR 1910.106, Flammable and combustible liquids:
 - (i) Table H-12, maximum allowable size of containers and portable

- tanks—29 CFR 1910.106(d)(2)(iii) as published in 40 FR (January 27, 1975) page 3982 and adopted by the North Carolina Department of Labor on January 27, 1975;
- (ii) ~~Table H-12, correction 29 CFR 1910.106(d)(2) as published in 40 FR (June 2, 1975) page 23743 and adopted by the North Carolina Department of Labor on June 2, 1975;~~
- (iii) ~~Removal of Paragraph (g)(2) and revision of Paragraph (g)(3)(iv) 29 CFR 1910.106 as published in FR (September 7, 1982) pages 39161-39164 and adopted by the North Carolina Department of Labor on December 1, 1982;~~
- (iv) ~~Amendment 29 CFR 1910.106 as published in 53 FR (April 12, 1988) page 12121;~~
- (v) ~~Amendment as published in 55 FR (August 6, 1990) page 32015.~~
- (21) ~~Subpart H Hazardous Materials, 29 CFR 1910.107, Spray finishing using flammable and combustible materials:~~
- (A) ~~Paragraph (f)(1) 29 CFR 1910.107 as published in 45 FR (September 12, 1980) page 60704 and adopted by the North Carolina Department of Labor on October 28, 1980;~~
- (B) ~~Deletions from Paragraphs (b)(5)(i), (e)(7) and (i)(3); revocation of Paragraph (e)(9)(ii) 29 CFR 1910.107 as published in 49 FR (February 10, 1984) page 5322 and adopted by the North Carolina Department of Labor on June 1, 1984;~~
- (C) ~~Amendment 29 CFR 1910.107 as published in 53 FR (April 12, 1988) page 12121.~~
- (22) ~~Subpart H Hazardous Materials, 29 CFR 1910.108, Dip tanks containing flammable or combustible liquids:~~
- (A) ~~Paragraphs (g)(1), (g)(2), introductory clause of (g)(3), (g)(4), and (g)(5) 29 CFR 1910.108 as published in 45 FR (September 12, 1980) page 60704 and adopted by the North Carolina Department of Labor on October 28, 1980;~~
- (B) ~~Deletions from Paragraphs (e)(1), (e)(2)(i), (g)(3)(ii)(a) and (h)(3)(x) 29 CFR 1910.108 as published in 49 FR (February 10, 1984) page 5322 and adopted by the North Carolina Department of Labor on June 1, 1984;~~
- (C) ~~Amendment 29 CFR 1910.108 as published in 53 FR (April 12, 1988) pages 12121-12122.~~
- (23) ~~Subpart H Hazardous Materials, 29 CFR 1910.109, Explosives and blasting agents:~~
- (A) ~~Paragraphs (i)(7)(i) and (i)(7)(ii)(a) 29 CFR 1910.109 as published in 45 FR (September 12, 1980) page 60704 and adopted by the North Carolina Department of Labor on October 28, 1980;~~
- (B) ~~Amendment 29 CFR 1910.109 as published in 53 FR (April 12, 1988) page 12122;~~
- (C) ~~Amendment to paragraph (k) as published in 57 FR (February 24, 1992) Page 6403.~~
- (24) ~~Subpart H Hazardous Materials, 29 CFR 1910.110, Storage and handling of liquefied petroleum gases:~~
- (A) ~~Deletions from Paragraphs (b)(10)(xii), (d)(7)(vi)(b), (d)(11), (e)(5)(iv)(e), (f)(2)(v); deletion of the note in Table H-28; revocation of Paragraph (h)(4)(iii)(b) 29 CFR 1910.110 as published in FR (February 10, 1984) page 5322 and adopted by the North Carolina Department of Labor on June 1, 1984;~~
- (B) ~~Amendment 29 CFR 1910.110 as published in 53 FR (April 12, 1988) page 12122;~~
- (C) ~~Amendment as published in 55 FR (August 6, 1990) page 32015.~~
- (25) ~~Subpart H Hazardous Materials, 29 CFR 1910.111, Storage and handling of anhydrous ammonia:~~
- (A) ~~Revocation of Paragraphs (b)(10)(i) and (b)(15) 29 CFR 1910.111 as published in FR (February 10, 1984) page 5322 and adopted by the North Carolina Department of Labor on June 1, 1984;~~
- (B) ~~Amendment 29 CFR 1910.111 as published in 53 FR (April 12, 1988) page 12122.~~
- (26) ~~Subpart H Hazardous Materials, 29 CFR 1910.119, Process Safety~~

- Management of Highly Hazardous Chemicals.
- (A) Final rule and appendices A through D as published in 57 FR (February 24, 1992) pages 6403-6417.
 - (B) Corrections as published in 57 FR (March 4, 1992) page 7847.
 - (C) Administrative stay as published in 57 FR (June 1, 1992) pages 23060-23061.
- (27) Subpart H Hazardous Materials, 29 CFR 1910.120, Hazardous Waste Operations and Emergency Response.
- (A) Final rule as published in 52 FR (March 6, 1989) pages 9317-9336.
 - (B) Corrections as published in 55 FR (April 13, 1990) pages 14073-14075.
 - (C) Corrections as published in 56 FR (April 18, 1991) pages 15832-15833.
- (28) Subpart I Personal Protective Equipment, 29 CFR 1910.134, Respiratory protection. Deletions from Paragraphs (b)(5), (e)(2) and (f)(3); revocation of Paragraph (b)(4) 29 CFR 1910.134 as published in 49 FR (February 10, 1984) page 5322 and adopted by the North Carolina Department of Labor on June 1, 1984.
- (29) Subpart J General Environmental Controls, 29 CFR 1910.141, Sanitation: Lavatories for industrial employment 29 CFR 1901.141 as published in 40 FR (April 23, 1975) page 18446 and adopted by the North Carolina Department of Labor on April 30, 1975.
- (30) Subpart J General Environmental Controls, 1910.144, Safety color code for marking physical hazards. Deletions from Paragraph (a)(3) 29 CFR 1910.144 as published in 49 FR (February 10, 1984) page 5322 and adopted by the North Carolina Department of Labor on June 1, 1984.
- (31) Subpart J General Environmental Controls, 1910.145, Specifications for accident prevention signs and tags. Deletions from Paragraphs (e)(1)(i) and (f)(1)(i); revocation of Paragraphs (f)(4)(i), (f)(4)(ii), (f)(5)(i), (f)(5)(ii), and (f)(6) 29 CFR 1910.145 as published in 49 FR (February 10, 1984) page 5322 and adopted by the North Carolina Department of Labor on June 1, 1984. Revisions of Paragraphs (f)(1) through (f)(8); and additions of Paragraphs (f)(9) Other Tags; Appendix A Recommended Color Coding; and Appendix B References for Further Information 29 CFR 1910.145(f) as published in 51 FR (February 19, 1986) pages 33251-33261.
- (32) Subpart J General Environmental Controls, 29 CFR 1910.147, Control of Hazardous Energy Sources (Lockout/Tagout), as published in 54 FR (September 1, 1989) pages 36644-36694 and with amendments as published in 55 FR (September 20, 1990) pages 38685-38687.
- (33) Subpart L Fire Protection, 29 CFR 1910.155, Scope, application and definitions applicable to this Subpart.
- (A) Revision of, and renumbering of existing 1910.156 to 1910.155 29 CFR 1910.155 as published in 45 FR (September 12, 1980) pages 60704-60706 and adopted by the North Carolina Department of Labor on October 28, 1980;
 - (B) Amendment 29 CFR 1910.155 as published in 53 FR (April 12, 1988) page 12122.
- (34) Subpart L Fire Protection, 29 CFR 1910.156, Fire brigades. Revision of, and renumbering of existing 1910.164 to 1910.156 29 CFR 1910.156 as published in 45 FR (September 12, 1980) pages 60706-60708 and adopted by the North Carolina Department of Labor on October 28, 1980.
- (35) Subpart L Fire Protection, 29 CFR 1910.157, Portable fire extinguishers. Revision of 29 CFR 1910.157 as published in 45 FR (September 12, 1980) pages 60708-60710 and adopted by the North Carolina Department of Labor on October 28, 1980.
- (36) Subpart L Fire Protection, 29 CFR 1910.158, Standpipe and hose systems. Revision of 29 CFR 1910.158 as published in 45 FR (September 12, 1980) page 60710 and adopted by the North Carolina Department of Labor on October 28, 1980.
- (37) Subpart L Fire Protection, 29 CFR 1910.159, Automatic sprinkler systems. Revision of 29 CFR 1910.159 as published in 45 FR (September 12, 1980) pages 60710-60711 and adopted

- by the North Carolina Department of Labor on October 28, 1980.
- (38) ~~Subpart L Fire Protection, 29 CFR 1910.160, Fixed extinguishing systems, general. Revision of 29 CFR 1910.160 as published in 45 FR (September 12, 1980) pages 60711-60712 and adopted by the North Carolina Department of Labor on October 28, 1980.~~
- (39) ~~Subpart L Fire Protection, 29 CFR 1910.161, Fixed extinguishing systems, dry chemical. Revision of 29 CFR 1910.161 as published in 45 FR (September 12, 1980) page 60712 and adopted by the North Carolina Department of Labor on October 28, 1980.~~
- (40) ~~Subpart L Fire Protection, 29 CFR 1910.162, Fixed extinguishing systems, gaseous agent. Deletion of existing heading and addition of a new 1910.162-29 CFR 1910.162 as published in 45 FR (September 12, 1980) page 60712 and adopted by the North Carolina Department of Labor on October 28, 1980.~~
- (41) ~~Subpart L Fire Protection, 29 CFR 1910.163, Fixed extinguishing systems, water spray and foam. Revision of 29 CFR 1910.163 as published in 45 FR (September 12, 1980) pages 60712-60713 and adopted by North Carolina Department of Labor on October 28, 1980.~~
- (42) ~~Subpart L Fire Protection, 29 CFR 1910.164, Fire detection systems. Renumbering of existing 1910.164 to 1910.156 as noted in 13 NCAC 7C .0101(a)(17), and addition of a new 1910.164-29 CFR 1910.164 as published in 45 FR (September 12, 1980) page 60713 and adopted by the North Carolina Department of Labor on October 28, 1980.~~
- (43) ~~Subpart L Fire Protection, 29 CFR 1910.165, Employee alarm systems. Revision of 29 CFR 1910.165 as published in 45 FR (September 12, 1980) pages 60713-60714 and adopted by the North Carolina Department of Labor on October 28, 1980.~~
- (44) ~~Subpart L Fire Protection, 29 CFR 1910.165a, Sources of standards and 1910.165b, Standards organizations. Revocation as published in 45 FR (September 12, 1980) page 60714 and adopted by the North Carolina Department of Labor on October 28, 1980.~~
- (45) ~~Subpart L Fire Protection, Appendices. Addition of appendices as published in 45 FR (September 12, 1980) pages 60714-60727 and adopted by the North Carolina Department of Labor on October 28, 1980.~~
- (46) ~~Subpart L Fire Protection, Means of Egress, and Hazardous Materials. Corrections-29 CFR 1910 as published in FR (May 1, 1981) pages 24556-24558 and adopted by the North Carolina Department of Labor on June 26, 1981.~~
- (47) ~~Subpart M Compressed Gas and Compressed Air Equipment, 29 CFR 1910.166, Inspection of compressed gas cylinders. Deletion of heading and text, section number reserved-29 CFR 1910.166 as published in 49 FR (February 10, 1984) page 5322 and adopted by the North Carolina Department of Labor on June 1, 1984.~~
- (48) ~~Subpart M Compressed Gas and Compressed Air Equipment, 29 CFR 1910.167, Safety relief devices for compressed gas cylinders. Deletion of heading and text, section number reserved-29 CFR 1910.167 as published in 49 FR (February 10, 1984) page 5322 and adopted by the North Carolina Department of Labor on June 1, 1984.~~
- (49) ~~Subpart M Compressed Gas and Compressed Air Equipment, 29 CFR 1910.168, Safety relief devices for cargo and portable tanks storing compressed gases. Deletion of heading and text, section number reserved-29 CFR 1910.168 as published in 49 FR (February 10, 1984) page 5322 and adopted by the North Carolina Department of Labor on June 1, 1984.~~
- (50) ~~Subpart M Compressed Gas and Compressed Air Equipment, 29 CFR 1910.169, Air receivers. Deletions from Paragraph (b)(1)-29 CFR 1910.169 as published in 49 FR (February 10, 1984) page 5322 and adopted by the North Carolina Department of Labor on June 1, 1984.~~

- (51) ~~Subpart N Materials Handling and Storage, 29 CFR 1910.177, Servicing multi piece rim wheels.~~
- (A) ~~Final rule 29 CFR 1910.177 as published in 45 FR (January 29, 1980) pages 6706-6716 and adopted by the North Carolina Department of Labor on February 28, 1980.~~
- (B) ~~Final Rule 29 CFR 1910.177 as published in 49 FR (February 3, 1984) pages 4337-4352 and adopted by the North Carolina Department of Labor on May 1, 1984.~~
- (C) ~~Revision 29 CFR 1910.177 as published in 52 FR (September 25, 1987) page 36026.~~
- (D) ~~Amendment 29 CFR 1910.177 as published in 53 FR (September 8, 1988) page 34737.~~
- (52) ~~Subpart N Materials Handling and Storage, 29 CFR 1910.178, Powered industrial trucks.~~
- (A) ~~Deletions from Paragraphs (g)(9) and (o)(4); revocation of Paragraphs (g)(3), (h)(1), (i)(2) and (n)(7)(ii) 29 CFR 1910.178 as published in 49 FR (February 10, 1984) page 5322 and adopted by the North Carolina Department of Labor on June 1, 1984;~~
- (B) ~~Amendment 29 CFR 1910.178 as published in 53 FR (April 12, 1988) page 12122;~~
- (C) ~~Amendment as published in 55 FR (August 6, 1990) page 32015.~~
- (53) ~~Subpart N Materials Handling and Storage, 29 CFR 1910.179, Overhead and gantry cranes:~~
- (A) ~~Deletions from Paragraphs (j)(2)(iv) and revocation of (j)(2)(v) 29 CFR 1910.179 as published in 40 FR (June 27, 1975) pages 27368-27400 and adopted by the North Carolina Department of Labor on July 15, 1976;~~
- (B) ~~Deletions from Paragraphs (b)(2), (e)(3), (d)(1)(i), (d)(1)(ii), (d)(2)(iv), (j)(4)(iii) and (k)(2); revocation of Paragraphs (e)(1)(iii), (d)(2)(iii), (j)(3)(ix) and (1)(2)(i)(f) 29 CFR 1910.179 as published in 49 FR (February 10, 1984) page 5322 and adopted by the North Carolina Department of Labor on June 1, 1984;~~
- (C) ~~Amendment as published in 55 FR (August 6, 1990) page 32015.~~
- (54) ~~Subpart N Materials Handling and Storage, 29 CFR 1910.180, Crawler locomotive and truck cranes.~~
- (A) ~~Revocation of Paragraph (h)(3)(ii)(d) 29 CFR 1910.189 as published in 49 FR (February 10, 1984) page 5323 and adopted by the North Carolina Department of Labor on June 1, 1984;~~
- (B) ~~Amendment 29 CFR 1910.180 as published in 53 FR (April 12, 1988) page 12122;~~
- (C) ~~Amendment as published in 55 FR (August 6, 1990) page 32015.~~
- (55) ~~Subpart N Materials Handling and Storage, 29 CFR 1910.181, Derricks.~~
- (A) ~~Deletions from Paragraphs (b)(2), (d)(3)(i)(f) and (d)(4)(iii); revocation of Paragraph (i)(3)(ii)(d) 29 CFR 1910.181 as published in 49 FR (February 10, 1984) page 5323 and adopted by the North Carolina Department of Labor on June 1, 1984;~~
- (B) ~~Amendment 29 CFR 1910.181 as published in 53 FR (April 12, 1988) page 12122;~~
- (C) ~~Amendment as published in 55 FR (August 6, 1990) page 32015.~~
- (56) ~~Subpart N Materials Handling and Storage, 29 CFR 1910.183, Helicopters. Final rule 29 CFR 1910.183 as published in 40 FR (March 26, 1975) pages 13436-13450 and adopted by the North Carolina Department of Labor on March 14, 1975.~~
- (57) ~~Subpart N Materials Handling and Storage, 29 CFR 1910.184, Industrial slings:~~
- (A) ~~Final rule 29 CFR 1910.184 as published in 40 FR (June 27, 1975) pages 27368-27400 and adopted by the North Carolina Department of Labor on July 15, 1976;~~
- (B) ~~Correction 29 CFR 1910.184(e)(9)(i) as published in 40 FR (July 28, 1975) page 31598 and adopted by the North Carolina Department of Labor on July 15, 1976;~~
- (C) ~~Deletion 29 CFR 1910.184(f)(6) as published in 41 FR (March 30, 1976) page 13352 and adopted by the North Carolina Department of Labor on July 15, 1976.~~
- (58) ~~Subpart N Materials Handling and Storage, 29 CFR 1910.189, Sources of standards. Redesignated 29 CFR~~

- 1910.189 as published in 40 FR (March 26, 1975) pages 13436-13450 and adopted by the North Carolina Department of Labor on April 14, 1975.
- (59) ~~Subpart N Materials Handling and Storage, 29 CFR 1910.190, Standards organizations. Redesignated 29 CFR 1910.190 as published in 40 FR (March 26, 1975) pages 13436-13450 and adopted by the North Carolina Department of Labor on April 14, 1975.~~
- (60) ~~Subpart O Machinery and Machine Guarding, 29 CFR 1910.211, Definitions:~~
- (A) ~~Addition of definitions under machine guarding 29 CFR 1910.211(d)(59) and (60) as published in 39 FR (December 3, 1974) pages 41841-41848 and adopted by the North Carolina Department of Labor on December 10, 1974;~~
- (B) ~~Amendment 29 CFR 1910.211(d)(12) and addition of new paragraphs as published in 53 FR (March 14, 1988) pages 8352-8353.~~
- (61) ~~Subpart O Machinery and Machine Guarding, 29 CFR 1910.213, Woodworking machinery requirements. Deletions from Paragraphs (e)(1), (e)(2), (h)(5), (i)(1) and (o)(2); revocation of Paragraphs (d)(2) and (m)(2) 29 CFR 1910.213 as published in 49 FR (February 10, 1984) page 5323 and adopted by the North Carolina Department of Labor on June 1, 1984.~~
- (62) ~~Subpart O Machinery and Machine Guarding, 29 CFR 1910.215, Abrasive wheel machinery. Deletions from Paragraphs (e)(8)(i), (e)(8)(ii), (e)(8)(iii) and (d)(5); revocation of Paragraph (d)(7) 29 CFR 1910.215 as published in 49 FR (February 10, 1984) page 5323 and adopted by the North Carolina Department of Labor on June 1, 1984.~~
- (63) ~~Subpart O Machinery and Machine Guarding, 29 CFR 1910.216, Mills and calendars in the rubber and plastics industries. Deletions from Paragraphs (b)(1)(i), and (e)(2); revocation of Paragraphs (b)(2) and (g) 29 CFR 1910.216 as published in 49 FR (February 10, 1984) page 5323 and adopted by the North Carolina Department of Labor on June 1, 1984.~~
- (64) ~~Subpart O Machinery and Machine Guarding 29 CFR 1910.217, Mechanical power presses:~~
- (A) ~~Definitions and other amendments 29 CFR 1910.217 as published in 39 FR (December 3, 1974) pages 41841-41848 and adopted by the North Carolina Department of Labor on December 10, 1974;~~
- (B) ~~Change of effective dates 29 CFR 1910.217 as published in 39 FR (December 26, 1974) page 44661 and adopted by the North Carolina Department of Labor on January 6, 1975;~~
- (C) ~~Corrections 29 CFR 1910.217 as published in 40 FR (January 27, 1975) page 3982 and adopted by the North Carolina Department of Labor on January 27, 1975;~~
- (D) ~~Corrections 29 CFR 1910.217 as published in 45 FR (February 8, 1980) pages 8593-8594 and adopted by the North Carolina Department of Labor on February 28, 1980;~~
- (E) ~~Amendment 29 CFR 1910.217 as published in 53 FR (March 14, 1988) pages 8353-8365.~~
- (65) ~~Subpart O Machinery and Machine Guarding, 29 CFR 1910.218, Forging machines. Deletions from Paragraphs (a)(3)(v), (b)(1), (e)(1)(ii), (h)(4) and (j)(2) 29 CFR 1910.218 as published in 49 FR (February 10, 1984) page 5323 and adopted by the North Carolina Department of Labor on June 1, 1984.~~
- (66) ~~Subpart O Machinery and Machine Guarding, 29 CFR 1910.219, Mechanical power transmission apparatus. Deletions from Paragraphs (1)(3), (o)(5)(ii), (o)(5)(iii) and (p)(7); revocation of Paragraphs (d)(2)(ii), (1)(1)(iii), (p)(5)(ii), (p)(5)(iii), (p)(5)(iv) and (p)(6)(iii) 29 CFR 1910.219 as published in 49 FR (February 10, 1984) page 5323 and adopted by the North Carolina Department of Labor on June 1, 1984.~~
- (67) ~~Subpart P Hand and Portable Tools and other Hand Held Equipment, 29 CFR 1910.243, Guarding of portable~~

- powered tools. Deletions from Paragraphs (d)(4)(iii) and (d)(4)(v) 29 CFR 1910.243 as published in 49 FR (February 10, 1984) page 5323 and adopted by the North Carolina Department of Labor on June 1, 1984.
- (68) ~~Subpart P Hand and Portable Tools and other Hand Held Equipment. 29 CFR 1910.244, other portable tools and equipment. Deletions from Paragraph (a)(2)(v) 29 CFR 1910.244 as published in 49 FR (February 10, 1984) page 5323 and adopted by the North Carolina Department of Labor on June 1, 1984.~~
- (69) ~~Subpart Q Welding, Cutting, and Brazing. Revisions as published in 55 FR (April 11, 1990) pages 13696-13711 and with amendments as published in 55 FR (June 20, 1990) page 25094, 55 FR (August 6, 1990) page 32015 and 55 FR (November 1, 1990) page 46053.~~
- (70) ~~Subpart R Special Industries. 29 CFR 1910.261, Pulp, paper, paperboard mills, and grain handling facilities:~~
- (A) ~~Agricultural operations 29 CFR 1910.261 as published in 40 FR (April 25, 1975) page 18268 and adopted by the North Carolina Department of Labor on April 30, 1975;~~
- (B) ~~Deletions from Paragraphs (d)(4)(ii), (e)(17), (e)(18), (g)(1)(iii), (g)(12)(iii), (h)(1), (h)(3)(v), (k)(18), (k)(22), (k)(29) and (k)(30); revocation of Paragraphs (d)(4)(i), (d)(4)(iv), (f)(6)(iii), (g)(14)(iv), (g)(19)(i), (g)(19)(ii), (j)(4)(v), (k)(5), (k)(19)(i) and (k)(19)(ii) 29 CFR 1910.261 as published in 49 FR (February 10, 1984) pages 5323-5324 and adopted by the North Carolina Department of Labor on June 1, 1984;~~
- (C) ~~Final Rule 29 CFR 1910.272 as published in 52 FR (December 31, 1987) pages 49592-49631, amended in 53 FR (May 18, 1988) pages 17695-17696, and adopted by the North Carolina Department of Labor on August 1, 1988;~~
- (D) ~~Amendments as published in 55 FR (August 6, 1990) page 32015.~~
- (71) ~~Subpart R Special Industries.~~
- (A) ~~29 CFR 1910.262, Textiles. Deletions from Paragraph (ee)(1) 29 CFR 1910.262 as published in 49 FR (February 10, 1984) page 5324 and adopted by the North Carolina Department of Labor on June 1, 1984;~~
- (B) ~~29 CFR 1910.265:~~
- (i) ~~Amendment as published in 53 FR (April 12, 1988) page 121231; and~~
- (ii) ~~Amendment as published in 55 FR (August 6, 1990) page 32015;~~
- (C) ~~29 CFR 1910.266:~~
- (i) ~~Amendment as published in 53 FR (April 12, 1988) page 12123;~~
- (ii) ~~Amendment as published in 55 FR (August 6, 1990) page 32015.~~
- (72) ~~Subpart R Special Industries. 29 CFR 1910.268, Telecommunications. Final rule 29 CFR 1910.268 as published in 40 FR (March 26, 1975) pages 13436-13450 and adopted by the North Carolina Department of Labor on April 14, 1975. Revision of 1910.268(a) as published in 52 FR (September 28, 1987) page 36387.~~
- (73) ~~Subpart R Special Industries. 29 CFR 1910.274, Sources of standards. Redesignated 29 CFR 1910.274 as published in 40 FR (March 26, 1975) pages 13436-13450 and adopted by the North Carolina Department of Labor on April 14, 1975.~~
- (74) ~~Subpart R Special Industries. 29 CFR 1910.275, Standards organizations. Redesignated 29 CFR 1910.275 as published in 40 FR (March 26, 1975) pages 13436-13450 and adopted by the North Carolina Department of Labor on April 14, 1975.~~
- (75) ~~Subpart S Electrical:~~
- (A) ~~29 CFR 1910.304, Amendment as published in 55 FR (August 6, 1990) page 32015.~~
- (B) ~~29 CFR 1910.309, National Electrical Code:~~
- (i) ~~Ground fault circuit interrupters 29 CFR 1910.309 and 29 CFR 1926.400 as published in 41 FR (December 21, 1976) pages 55695-55704 and adopted by the North Carolina Department of Labor on January 15, 1977;~~

- (ii) ~~Ground fault circuit interrupters, corrections 29 CFR 1910.309 and 1926.400 as published in 42 FR (January 14, 1977) page 2956 and adopted by the North Carolina Department of Labor on March 7, 1977;~~
- (iii) ~~Electrical, final rule 29 CFR 1910 as published in 46 FR (January 16, 1981) pages 4034-4076 and adopted by the North Carolina Department of Labor on May 8, 1981 and amendment of 29 CFR 1910.399 as published in 53 FR (April 12, 1988) page 12123 and as published in 55 FR (August 6, 1990) page 32020.~~
- (C) ~~Safety-Related Work Practices, 29 CFR 1910.331, through 1910.335. Final rule as published in 55 FR (August 6, 1990) pages 32016 through 32020 and amended in 55 FR (November 1, 1990) pages 46053 and 46054.~~
- (76) ~~Subpart T Commercial Diving Operations:~~
 - (A) ~~Emergency temporary standard 29 CFR 1910.401 as published in 41 FR (June 15, 1976) pages 24272-24292 and adopted by the North Carolina Department of Labor on July 15, 1976;~~
 - (B) ~~Deletion of emergency temporary standard 29 CFR 1910.401 as published in 41 FR (November 5, 1976) pages 48742-48743 and adopted by the North Carolina Department of Labor on November 18, 1976;~~
 - (C) ~~Educational/scientific diving, addition of Paragraph (a)(2)(iv) and new definition of "scientific diving" 29 CFR 1910.401 and .402 as published in FR (November 26, 1982) pages 53357-53365 and adopted by the North Carolina Department of Labor on March 1, 1983;~~
 - (D) ~~Final rule, addition of Subpart T 29 CFR 1910 as published in 42 FR (July 22, 1977) pages 37668-37673 and adopted by the North Carolina Department of Labor on July 29, 1977;~~
 - (E) ~~Corrections 29 CFR 1910.423 as published in 45 FR (June 20, 1980) pages 41634-41635 and adopted by the North Carolina Department of Labor on June 27, 1980;~~
- (F) ~~Recordkeeping requirements, revision of Paragraphs (b)(2) and (b)(4) 29 CFR 1910.440 as published in 45 FR (May 23, 1980) page 35281 and adopted by the North Carolina Department of Labor on June 24, 1980;~~
- (G) ~~Removal of medical requirements from Title 29 of the Code of Federal Regulations 29 CFR 1910.411 as published in 49 FR (January 6, 1984) page 881 and adopted by the North Carolina Department of Labor on April 1, 1984.~~
- (H) ~~Correction of reference 29 CFR 1910.430(e)(1) as published in 51 FR (September 18, 1986) pages 33033-33034.~~
- (77) ~~Subpart Z Occupational Health and Environmental Control, 1910.1000, Air contaminants:~~
 - (A) ~~Recodification of air contaminant standards 29 CFR 1910.1000 through 29 CFR 1910.1017 as published in 40 FR (May 28, 1975) pages 23072-23073 and adopted by the North Carolina Department of Labor on May 30, 1975;~~
 - (B) ~~Recodification of air contaminant standards, corrections 29 CFR 1910 as published in 40 FR (June 3, 1975) page 23847 and adopted by the North Carolina Department of Labor on June 9, 1975;~~
 - (C) ~~Acrylonitrile, emergency temporary standard, deletion from table Z-1 29 CFR 1910.1000 as published in 43 FR (January 17, 1978) page 2600 and adopted by the North Carolina Department of Labor on January 26, 1978;~~
 - (D) ~~Acrylonitrile, final rule, deletion from Table Z-1 29 CFR 1910.1000 as published in 43 FR (October 3, 1978) pages 45761-45891 and adopted by the North Carolina Department of Labor on October 13, 1978;~~
 - (E) ~~Lead and its inorganic compounds, deletion from Table Z-2 29 CFR 1910.1000 as published in 43 FR (November 14, 1978) page 53007 and adopted by the North Carolina~~

- Department of Labor on November 22, 1978;
- (F) ~~Corrections 29 CFR 1910.1000 and 1910.1500 as published in 43 FR (December 8, 1978) pages 57601-57603 and adopted by the North Carolina Department of Labor on December 14, 1978;~~
- (G) ~~Removal of Footnote 1 to Table Z-2 29 CFR 1910.1000 as published in 46 FR (June 19, 1981) pages 32021-32022 and adopted by the North Carolina Department of Labor on July 13, 1981;~~
- (H) ~~Deletion of entry "Ethylene oxide, 50 ppm, 90 mg/m³" from Table z-1 29 CFR 1910.1000 as published in 49 FR (June 22, 1984) page 25796 and adopted by the North Carolina Department of Labor on November 1, 1984;~~
- (I) ~~Section 1910.1000 is amended by revising the introductory text and paragraphs (a) through (d); republishing paragraph (e); adding a new paragraph (f); removing Table Z-1 and adding Table Z-1-A, and republishing Tables Z-2 and Z-3 as published in 54 FR (January 19, 1989) pages 2920-2983;~~
- (J) ~~Corrections as published in 57 FR (July 1, 1992) pages 29204-29206.~~
- (78) ~~Subpart Z Occupational Health and Environmental Control, 29 CFR 1910.1001, Asbestos:~~
 - (A) ~~Revision of Paragraph (i)(1) exposure records 29 CFR 1910.1001 as published in 41 FR (March 19, 1976) page 11505 and adopted by the North Carolina Department of Labor on November 1, 1976;~~
 - (B) ~~Revision of Paragraphs (i)(2) and (j)(6)(ii) 29 CFR 1910.1001 as published in 45 FR (May 23, 1980) page 35281 and adopted by the North Carolina Department of Labor on June 24, 1980;~~
 - (C) ~~Revision of 29 CFR 1910.1001 as published in 51 FR (June 20, 1986) page 22733 and adopted by the North Carolina Department of Labor on July 21, 1986;~~
 - (D) ~~Revision of 29 CFR 1910.1001, as published in 53 FR 35625-35627 (September 14, 1988), and corrected in 53 FR (September 23, 1988) page 37080, amended as follows:~~
 - (i) ~~In Paragraph (o)(1) change the effective date from October 14, 1988, to March 6, 1989;~~
 - (ii) ~~In Paragraph (o)(3)(i) change the action date from December 13, 1988, to May 6, 1989;~~
 - (iii) ~~In Paragraph (o)(3)(ii) change the action date from March 13, 1989, to August 6, 1989;~~
 - (iv) ~~In Paragraph (o)(3)(iii) change the action date from September 14, 1989, to February 6, 1990;~~
- (E) ~~Revision of final rule as published in 57 FR (June 8, 1992) page 24330.~~
- (79) ~~Subpart Z Occupational Health and Environmental Control, 29 CFR 1910.1003, 4 Nitrophenyl. Revision of Paragraph (g)(2)(ii) 29 CFR 1910.1003 as published in 45 FR (May 23, 1980) page 35281 and adopted by the North Carolina Department of Labor on June 24, 1980.~~
- (80) ~~Subpart Z Occupational Health and Environmental Control, 29 CFR 1910.1004, alpha Naphthylamine. Revision of Paragraph (g)(2)(ii) 29 CFR 1910.1004 as published in 45 FR (May 23, 1980) page 35281 and adopted by the North Carolina Department of Labor on June 24, 1980.~~
- (81) ~~Subpart Z Occupational Health and Environmental Control, 29 CFR 1910.1006, Methyl chloromethyl ether. Revision of Paragraph (g)(2)(ii) 29 CFR 1910.1006 as published in 45 FR (May 23, 1980) page 35281 and adopted by the North Carolina Department of Labor on June 24, 1980.~~
- (82) ~~Subpart Z Occupational Health and Environmental Control, 29 CFR 1910.1007, 3,3'-Dichlorobenzidine (and its salts). Revision of Paragraph (g)(2)(ii) 29 CFR 1910.1007 as published in 45 FR (May 23, 1980) page 35281 and adopted by the North Carolina Department of Labor on June 24, 1980.~~
- (83) ~~Subpart Z Occupational Health and Environmental Control, 29 CFR 1910.1008, bis-Chloromethyl ether. Revision of Paragraph (g)(2)(ii) 29 CFR 1910.1008 as published in 45 FR (May 23, 1980) page 35282 and~~

- adopted by the North Carolina Department of Labor on June 24, 1980.
- (84) Subpart Z Occupational Health and Environmental Control, 29 CFR 1910.1009, beta-Naphthylamine. Revision of Paragraph (g)(2)(ii) 29 CFR 1910.1009 as published in 45 FR (May 23, 1980) page 35282 and adopted by the North Carolina Department of Labor on June 24, 1980.
- (85) Subpart Z Occupational Health and Environmental Control, 29 CFR 1910.1010, Benzidine. Revision of Paragraph (g)(2)(ii) 29 CFR 1910.1010 as published in 45 FR (May 23, 1980) page 35282 and adopted by the North Carolina Department of Labor on June 24, 1980.
- (86) Subpart Z Occupational Health and Environmental Control, 29 CFR 1910.1011, 4-Aminodiphenyl. Revision of Paragraph (g)(2)(ii) 29 CFR 1910.1011 as published in 45 FR (May 23, 1980) page 35282 and adopted by the North Carolina Department of Labor on June 24, 1980.
- (87) Subpart Z Occupational Health and Environmental Control, 29 CFR 1910.1012, Ethyleneimine. Revision of Paragraph (g)(2)(ii) 29 CFR 1910.1012 as published in 45 FR (May 23, 1980) page 35282 and adopted by the North Carolina Department of Labor on June 24, 1980.
- (88) Subpart Z Occupational Health and Environmental Control, 29 CFR 1910.1013, beta-Propiolactone. Revision of Paragraph (g)(2)(ii) 29 CFR 1910.1013 as published in 45 FR (May 23, 1980) page 35282 and adopted by the North Carolina Department of Labor on June 24, 1980.
- (89) Subpart Z Occupational Health and Environmental Control, 29 CFR 1910.1014, 2-Acetylaminofluorene. Revision of Paragraph (g)(2)(ii) 29 CFR 1910.1014 as published in 45 FR (May 23, 1980) page 35282 and adopted by the North Carolina Department of Labor on June 24, 1980.
- (90) Subpart Z Occupational Health and Environmental Control, 29 CFR 1910.1015, 4-Dimethylaminoazobenzene. Revision of Paragraph (g)(2)(ii) 29 CFR 1910.1015 as published in the 45 FR (May 23, 1980) page 35282 and adopted by the North Carolina Department of Labor on June 24, 1980.
- (91) Subpart Z Occupational Health and Environmental Control, 29 CFR 1910.1016, N-Nitrosodimethylamine. Revision of Paragraph (g)(2)(ii) 29 CFR 1910.1016 as published in the 45 FR (May 23, 1980) page 35282 and adopted by the North Carolina Department of Labor on June 24, 1980.
- (92) Subpart Z Occupational Health and Environmental Control, 29 CFR 1910.1017, Vinyl chloride. Revision of introductory text of Paragraphs (m)(2) and (m)(3) and deletion of Paragraphs (m)(4), (m)(5), and (m)(6) 29 CFR 1910.1017 as published in the 45 FR (May 23, 1980) page 35282 and adopted by the North Carolina Department of Labor on June 24, 1980.
- (93) Subpart Z Occupational Health and Environmental Control, 29 CFR 1910.1018, Inorganic arsenic:
- (A) Final rule 29 CFR 1910.19, 29 CFR 1910.1000, 29 CFR 1910.1018 as published in 43 FR (May 5, 1978) pages 19583-19631 and adopted by North Carolina Department of Labor on May 18, 1978;
- (B) Corrections 29 CFR 1910.1018 as published in 43 FR (June 30, 1978) pages 28472-28473 and adopted by the North Carolina Department of Labor on July 11, 1978;
- (C) Revision of Paragraph (q)(3)(ii) and Appendix A Section VIII, deletion of Paragraph (q)(4)(iv) 29 CFR 1910.1018 as published in 45 FR (May 23, 1980) pages 35282-35283 and adopted by the North Carolina Department of Labor on June 24, 1980.
- (94) Subpart Z Occupational Health and Environmental Control, 29 CFR 1910.1025, Lead:
- (A) Final rule 29 CFR 1910.1025 as published in 43 FR (November 14, 1978) pages 53007-53014 and adopted by the North Carolina Department of Labor on November 22, 1978;
- (B) Corrections 29 CFR 1910.1025 as published in 44 FR (January 26, 1979) pages 5446-5448 and adopted

- by the North Carolina Department of Labor on April 20, 1979;
- (C) ~~Corrections 29 CFR 1910.1025 as published in 44 FR (April 6, 1979) pages 20680-20681 and adopted by the North Carolina Department of Labor on May 3, 1979;~~
- (D) ~~Corrections 29 CFR 1910.1025 as published in 44 FR (August 28, 1979) page 50338 and adopted by the North Carolina Department of Labor on September 10, 1979;~~
- (E) ~~Appendices 29 CFR 1910.1025 as published in 44 FR (October 23, 1979) pages 60980-60995 and adopted by the North Carolina Department of Labor on November 26, 1979;~~
- (F) ~~Corrections to appendices 29 CFR 1910.1025 as published in 44 FR (November 30, 1979) pages 68827-68828 and adopted by the North Carolina Department of Labor on January 21, 1980;~~
- (G) ~~Revision of Paragraph (n)(4)(ii), deletion of Paragraph (n)(4)(iii), and addition of Paragraph (n)(5)(iv) 29 CFR 1910.1025 as published in 45 FR (May 23, 1980) page 35283 and adopted by the North Carolina Department of Labor on June 24, 1980;~~
- (H) ~~Revised supplemental statement of reasons 29 CFR 1910.1025 as published in 46 FR (December 11, 1981) pages 60758-60776 and adopted by the North Carolina Department of Labor on March 1, 1982;~~
- (I) ~~Respirator fit testing, revision of Paragraph (f)(3)(ii) 29 CFR 1910.1025 as published in FR (November 12, 1982) pages 51110-51119 and adopted by the North Carolina Department of Labor on January 1, 1983;~~
- (J) ~~Respirator fit testing, corrections 29 CFR 1910.1025 as published in FR (March 8, 1983) pages 9641-9642 and adopted by the North Carolina Department of Labor on June 1, 1983;~~
- (K) ~~Amendment as published in 55 FR (January 30, 1990) pages 3166-3167.~~
- (L) ~~Correction as published in 56 FR (May 31, 1991) page 24686.~~
- (95) ~~Subpart Z Occupational Health and Environmental Control, 29 CFR 1910.1027, Cadmium. Final rule as published in 57 FR (September 14, 1992) pages 42388-42452.~~
- (96) ~~Subpart Z Occupational Health and Environmental Control, 29 CFR 1910.1028, Benzene:~~
 - (A) ~~Emergency temporary standard 29 CFR 1910.20, 29 CFR 1910.1000, 29 CFR 1910.1028 as published in 42 FR (May 3, 1977) pages 22516-22529 and adopted by the North Carolina Department of Labor on May 16, 1977;~~
 - (B) ~~Correction 29 CFR 1910.20, 29 CFR 1910.1000, 29 CFR 1910.1028 as published in 42 FR (May 10, 1977) page 23601 and adopted by the North Carolina Department of Labor on May 16, 1977;~~
 - (C) ~~Amendment 29 CFR 1910.1028 as published in 42 FR (May 24, 1977) page 26429 and adopted by the North Carolina Department of Labor on July 6, 1977;~~
 - (D) ~~Final rule 29 CFR 1910.1028, 29 CFR 1910.1000 Table Z-2, 29 CFR 1910.19, 29 CFR 1910.20 as published in 43 FR (February 10, 1978) pages 5917-5970 and adopted by the North Carolina Department of Labor on February 21, 1978;~~
 - (E) ~~Corrections 29 CFR 1910.19, 29 CFR 1910.1000, 29 CFR 1910.1028 as published in 43 FR (March 31, 1978) pages 13561-13563 and adopted by the North Carolina Department of Labor on April 11, 1978;~~
 - (F) ~~Correction 29 CFR 1910.1028 as published in 43 FR (June 27, 1978) pages 27961-27971 and adopted by the North Carolina Department of Labor on June 11, 1978;~~
 - (G) ~~Revision of Paragraph (1)(3)(ii) and Appendix A Section VII, deletion of Paragraphs (1)(3)(iii) and (1)(3)(iv), and addition of Paragraph (1)(4)(iv) 29 CFR 1910.1028 as published in 45 FR (May 23, 1980) page 35282 and adopted by the North Carolina Department of Labor on June 24, 1980;~~
 - (H) ~~Removal of 29 CFR 1910.1028 as published in 46 FR (June 19, 1981) pages 32021-32022 and adopted by~~

- the North Carolina Department of Labor on July 13, 1981.
- (I) Amendment of 29 CFR 1910.1028, as published in 52 FR (September 11, 1987, pages 34562-34573).
- (97) Subpart Z Occupational Health and Environmental Control, 29 CFR 1910.1029, Coke oven emissions:
 - (A) Final rule 29 CFR 1910.1029 as published in 41 FR (October 22, 1976) pages 46741-46790 and adopted by the North Carolina Department of Labor on November 18, 1976;
 - (B) Corrections 29 CFR 1910.1029 as published in 42 FR (January 18, 1977) pages 3304-3306 and adopted by the North Carolina Department of Labor on March 7, 1977;
 - (C) Revision of Paragraph (m)(3)(ii), deletion of Paragraphs (m)(3)(iii) and (m)(3)(iv), and addition of Paragraph (m)(4)(iv) 29 CFR 1910.1029 as published in 45 FR (May 23, 1980) page 35283 and adopted by the North Carolina Department of Labor on June 24, 1980.
- (98) Subpart Z Occupational Health and Environmental Control, 29 CFR 1910.1030, Bloodborne Pathogens:
 - (A) Final rule as published in 56 FR (December 6, 1991) pages 64175-64182;
 - (B) Corrections as published in 57 FR (July 1, 1992) page 29206.
- (99) Subpart Z Occupational Health and Environmental Control, 29 CFR 1910.1043, Cotton dust:
 - (A) Final rule 29 CFR 1910.19, 29 CFR 1910.1000, 29 CFR 1910.1043, 29 CFR 1910.1046(a) as published in 43 FR (June 23, 1978) pages 27349-27463 and adopted by the North Carolina Department of Labor on June 30, 1978;
 - (B) Correction 29 CFR 1910.1043 as published in 43 FR (June 30, 1978) page 28473 and adopted by the North Carolina Department of Labor on July 11, 1978;
 - (C) Corrections 29 CFR 1910.1043 as published in 43 FR (June 30, 1978) pages 28473-28474 and adopted by the North Carolina Department of Labor on July 11, 1978;
 - (D) Corrections 29 CFR 1910.1043 as published in 43 FR (August 8, 1978) pages 35032-35035 and adopted by the North Carolina Department of Labor on August 28, 1978;
 - (E) Corrections 29 CFR 1910.1043 as published in 43 FR (December 5, 1978) pages 56893-56894 and adopted by the North Carolina Department of Labor on December 14, 1978;
 - (F) New effective dates 29 CFR 1910.1043 as published in 45 FR (February 26, 1980) pages 12416-12417 and adopted by the North Carolina Department of Labor on March 26, 1980;
 - (G) Revision of Paragraph (k)(3)(ii), deletion of Paragraphs (k)(3)(iii) and (k)(3)(iv), and addition of Paragraph (k)(4)(iv) 29 CFR 1910.1043 as published in 45 FR (May 23, 1980) page 35283 and adopted by the North Carolina Department of Labor on June 24, 1980;
 - (H) Amendment of non-mandatory Appendix A 29 CFR 1910.1043 as published in 45 FR (October 10, 1980) pages 67339-67340 and adopted by the North Carolina Department of Labor on June 26, 1981;
 - (I) Administrative stay 29 CFR 1910.1043 as published in 49 FR (February 23, 1984) pages 6717-6719 and adopted by the North Carolina Department of Labor on June 1, 1984;
 - (J) Extension of administrative stay 29 CFR 1910.1043 as published in 50 FR (April 15, 1985) and adopted by the North Carolina Department of Labor on July 1, 1985.
 - (K) Amendment to final rule as published in 50 FR (December 13, 1985) pages 51120-51179 with corrections as published in 51 FR (July 3, 1986) pages 24324-24325.
- (100) Subpart Z Occupational Health and Environmental Control, 29 CFR 1-9-1-0-1-0-4-4-, 1,2-dibromo-3-chloropropane:
 - (A) Emergency temporary standard 29 CFR 1910.1044 as published in 42 FR (September 9, 1977) pages 45535-45549 and adopted by the North Carolina Department of Labor on September 19, 1977;

- ~~(B) Correction 29 CFR 1910.1044, as published in 42 FR (September 16, 1977) page 46540 and adopted by the North Carolina Department of Labor on September 19, 1977;~~
- ~~(C) Final rule 29 CFR 1910.1044 as published in 43 FR (March 17, 1978) pages 11513-11533 and adopted by the North Carolina Department of Labor on March 24, 1978;~~
- ~~(D) Revision of Paragraph (p)(3)(ii), deletion of Paragraphs (p)(3)(iii) and (p)(3)(iv), and addition of Paragraph (p)(4)(iv) 29 CFR 1910.1044 as published in 45 FR (May 23, 1980) page 35283 and adopted by the North Carolina Department of Labor on June 24, 1980.~~
- ~~(101) Subpart Z—Occupational Health and Environmental Control, 29 CFR 1910.1045, Acrylonitrile:~~
 - ~~(A) Emergency temporary standard 29 CFR 1910.1045 as published in 43 FR (January 17, 1978) pages 2600-2607 and adopted by the North Carolina Department of Labor on January 26, 1978;~~
 - ~~(B) Final rule 29 CFR 1910.1045 as published in 43 FR (October 3, 1978) pages 45761-45819 and adopted by the North Carolina Department of Labor on October 13, 1978;~~
 - ~~(C) Revision of Paragraph (q)(4)(ii) and Appendix A Section VI D, deletion of Paragraph (q)(4)(iii), and addition of Paragraph (q)(5)(iv) 29 CFR 1910.1045 as published in 45 FR (May 23, 1980) page 35283 and adopted by the North Carolina Department of Labor on June 24, 1980.~~
- ~~(102) Subpart Z—Occupational Health and Environmental Control, 29 CFR 1910.1046, Exposure to cotton dust in cotton gins:~~
 - ~~(A) Final rule, correction 29 CFR 1910.1046 as published in 43 FR (June 30, 1978) page 28474 and adopted by North Carolina Department of Labor on July 11, 1978;~~
 - ~~(B) Revision of Paragraph (h)(2)(ii), and addition of Paragraph (h)(3)(iv) 29 CFR 1910.1046 as published in 45 FR (May 23, 1980) page 35283 and~~
- ~~adopted by the North Carolina Department of Labor on June 24, 1980;~~
- ~~(C) Removal of 1910.1046 29 CFR 1910.1046 as published in 46 FR (June 19, 1981) pages 32021-32022 and adopted by the North Carolina Department of Labor on July 13, 1981.~~
- ~~(103) Subpart Z—Occupational Health and Environmental Control, 29 CFR 1910.1047, Ethylene oxide:~~
 - ~~(A) Final rule 29 CFR 1910.1047 as published in 49 FR (June 22, 1984) pages 25733-25809 and adopted by the North Carolina Department of Labor on November 1, 1984;~~
 - ~~(B) Revision of Paragraph (m) and addition of language at end of standard 29 CFR 1910.1047 as published in 50 FR (March 12, 1985) and adopted by the North Carolina Department of Labor on July 1, 1985;~~
 - ~~(C) Correction and clarification of 29 CFR 1910.1047 as published in 51 FR (July 10, 1986) page 25053 and adopted by the North Carolina Department of Labor on September 22, 1986;~~
 - ~~(D) Final rule 29 CFR 1910.1047 as published in 53 FR (April 6, 1988) pages 11436-11438 and adopted by the North Carolina Department of Labor on February 1, 1989.~~
- ~~(104) Subpart Z—Occupational Health and Environmental Control, 29 CFR 1910.1050, Methylenedianiline. Final rule as published in 57 FR (August 10, 1992) pages 35666-35681.~~
- ~~(105) Subpart Z—Occupational Health and Environmental Control, 29 CFR 1910.1200, Hazard communication. Final rule 29 CFR 1910.1200 as published in 48 FR (November 25, 1983) pages 53279-53348 and adopted by the North Carolina Department of Labor on February 1, 1984, amended as follows:~~
 - ~~(A) Paragraph (a) Purpose (1) Change the rule to read as follows: The purpose of this section is to ensure that the hazards of all chemicals produced or imported by chemical manufacturers or importers are evaluated, and that information concerning their hazards~~

is transmitted to affected employers and employees.

- (B) Paragraph (b) Scope and application (1).—Change the rule to read as follows: This section requires chemical manufacturers or importers to assess the hazards of chemicals which they produce or import, and all employers to provide information to their employees about the hazards to which they are exposed, by means of a hazard communication program; labels and other forms of warning; materials safety data sheets; and information and training. In addition, this section requires distributors to transmit the required information to affected employers.
- (C) Paragraph (b) Scope and application (3)(iii).—Change the rule to read as follows: Employers shall ensure that laboratory employees are apprised of the hazards of the chemicals in their workplaces in accordance with paragraph (h) of this section, excluding the "list(s) of hazardous chemicals."
- (D) Paragraph (b) Scope and application (4)(5). Renumber to read respectively (5) and (6).
- (E) Paragraph (b) Scope and Application (4).—Add a new section to the rule as follows:—This section applies to employers who maintain no carcinogens as defined in paragraphs (d)(4) and (d)(5) and less than a total of two (2) gallons liquid measure or twenty (20) pounds dry weight of hazardous chemicals only as follows:
 - (i) Employers shall ensure that labels in incoming containers of hazardous chemicals are not removed or defaced.
 - (ii) Employers shall maintain any material safety data sheets that are received with incoming shipments of hazardous chemicals, and ensure that they are readily accessible to employees; and
 - (iii) Employers shall ensure that employees are apprised of the hazards of the chemicals in their workplaces in accordance with paragraphs (h)(1)(i), (h)(1)(ii), (h)(2)(1), (h)(2)(ii), and (h)(2)(iii)

of this section.

- (F) Paragraph (b) Scope and application (6).—Change the rule to delete the word "and" after "(iv) Articles;" and add two new paragraphs to read as follows:
 - (vi) Medicines stored or used for direct patient care; and
 - (vii) Products subject to the packaging and labelling provision of the Consumer Product Safety Act or the Federal Hazardous Substances Act or regulations issued under those Acts by the Consumer Product Safety Commission, as long as such packages are not opened until finally purchased by the consumer. For the purposes of this provision, "consumer" includes employers who purchase products in the same form, concentration, and manner as they are sold to other consumers, and to the employer's knowledge, employee exposure is not significantly greater than the exposure of other consumers occurring during the principal consumer use of the product, unless the employer maintains more than five (5) gallons liquid measure or fifty (50) pounds dry weight of any single hazardous chemical, in which case the employer must comply with the requirements of this section for that chemical and must obtain a material safety data sheet for such consumer product from the manufacturer.
- (G) Paragraph (c) Definitions. —Change the definitions of "Chemical manufacturer," "Employee," "Employer," "Importer," and "Manufacturing purchaser," and "Trade secret" in this paragraph of the rule to read respectively as follows:
 - "Chemical manufacturer" means an employer with a workplace where chemical(s) are produced for use or distribution.
 - "Employee" means a worker employed by an employer in a workplace who may be exposed to

hazardous chemicals under normal operating conditions or foreseeable emergencies, including but not limited to production workers, line supervisors, and repair or maintenance personnel.

"Employer" means a person engaged in a business, or a governmental unit, where chemicals are either used, or are produced for use or distribution.

"Importer" means the first business with employees within the Customs Territory of the United States which receives hazardous chemicals produced in other countries for the purpose of supplying them to distributors or purchasers within the United States.

"Purchaser" means an employer with a workplace who purchases a hazardous chemical for use within that workplace.

"Trade secret" means any confidential formula, pattern, process, device, information or compilation of information that is used in an employer's business, and that gives the employer an opportunity to obtain an advantage over competitors who do not know or use it. Appendix D sets out the criteria to be used in evaluating trade secrets.

- (I) Paragraph (g) Material Safety Data Sheets (7). Change the rule to read as follows:

Distributors shall ensure that material safety data sheets, and updated information, are provided to other distributors and purchasers of hazardous chemicals.

- (J) Paragraph (h) Employee information and training (1) Information. Change the rule by replacing the period at the end of (iii) with a semicolon and by adding following the semicolon the word "and," and by adding a new paragraph to read as follows:

- (iv) The identity, on request, of any chemical with which they work. If the employee believes an

unidentified substance to be a hazardous chemical and if the employer has not within five (5) working days provided to the employee the identity of the substance, the employee may refuse to work with the substance. The employee may be required to work with the chemical once its identity has been provided. No employee shall be discharged or discriminated against because such employee has refused to work with an unidentified chemical in accordance with this provision. Temporary reassignment of any employee to a comparable job at equal pay that does not involve exposure to the unidentified chemical shall not be considered discrimination for the purposes of this provision.

- (K) Paragraph (i) Trade secrets (i)(1)(iv). Change the rule to read as follows:

- (iv) The specific chemical identity is made available to health professions, employees and designated representatives, in accordance with the applicable provisions of this paragraph.

- (L) Paragraph (i) Trade secrets (3). Change the first paragraph of the rule by inserting the word "nurse" between the words "toxicologist," and "or" in the parentheses:

- (M) Paragraph (i) Trade secrets (3). Delete "If:" at the end of the first paragraph and insert ", and to employees or designated representatives, if:"

- (N) Paragraph (i) Trade secrets (3)(iii). Change the rule to read as follows:

- (iii) The request explains in detail why the disclosure of the specific chemical identity is essential and that, in lieu thereof, the disclosure of the following information to the health professional, employee, or designated representative, would not satisfy the purposes described in paragraph (i)(3)(ii) of this section:

- (O) Paragraph (i) Trade secrets (3)(v). Change the rule to read as follows:

- (v) The health professional, and the

employer or contractor of the services of the health professional (i.e., downstream employer, labor organization, or individual employee), employee, or designated representative, agree in a written confidentiality agreement that the health professional, employee, or designated representative, will not use the trade secret information for any purpose other than the health need(s) asserted and agree not to release the information under any circumstances other than to OSHA, as provided in paragraph (i)(6) of this section, except as authorized by the terms of the agreement or by the chemical manufacturer, importer or employer.

(P) ~~Paragraph (i) Trade secrets (6)~~
Change the rule to read as follows:

(6) ~~If the health professional, employee, or designated representative receiving the trade secret information decides that there is a need to disclose it to OSHA, the chemical manufacturer, importer, or employer who provided the information shall be informed by the health professional, employee, or designated representative prior to, or at the same time as, such disclosure.~~

(Q) ~~Paragraph (i) Trade Secrets (7)(i)~~
Change the rule to read as follows:

(i) ~~Be provided to the health professional, employee, or designated representative within thirty days of the request.~~

(R) ~~Paragraph (i) Trade Secrets (8).~~
Change the rule to read as follows:

(8) ~~The health professional, employee, or designated representative, whose request for information is denied under paragraph (i)(3) of this section, may refer the request and the written denial of the request to OSHA for consideration.~~

(S) ~~Paragraph (i) Trade Secrets (9)~~
Change the first paragraph to read as follows:

(9) ~~When a health professional, employee or designated representative refers the denial to OSHA under paragraph (i)(8) of this section, OSHA shall consider the evidence to determine if:~~

(T) ~~Paragraph (i) Trade secrets (9)(ii).~~
Change the rule to read as follows:

(ii) ~~The health professional, employee or designated representative, has supported the claim that there is a medical or occupational health need for the information; and~~

(U) ~~Paragraph (i) Trade secrets (9)(iii).~~
Change the rule to read as follows:

(iii) ~~The health professional, employee, or designated representative, has demonstrated adequate means to protect the confidentiality.~~

(V) ~~Paragraph (i) Trade secrets (10)(i).~~
Change the rule to read as follows:

(i) ~~If OSHA determines that the specific chemical identity requested under paragraph (i)(3) of this section is not a bona fide trade secret, or that it is a trade secret, but the requesting health professional, employee, or designated representative has a legitimate medical or occupational health need for the information, has executed a written confidentiality agreement, and has shown adequate means to protect the confidentiality of the information, the chemical manufacturer, importer, or employer will be subject to citation by OSHA.~~

(W) ~~Add Appendix D after Appendix C, as follows: Appendix D to 13 NCAC 7C .0101(a)(99) Definition of "Trade Secret" (Mandatory). The following is a reprint of the "Restatement of Torts" section 757, comment b (1939):~~

b. ~~Definition of trade secret. A trade secret may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or~~

use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business (see paragraph 759 of the Restatement of Torts which is not included in this Appendix) in that it is not simply information as to single or ephemeral events in the conduct of the business, as, for example, the amount or other terms of a secret bid for a contract or the salary of certain employees, or the security investments made or contemplated, or the date fixed for the announcement of a new policy or for bringing out a new model or the like. A trade secret is a process or device for continuous use in the operations of the business. Generally, it relates to the production of goods, as, for example, a machine or formula for the production of an article. It may, however, relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates, or other concessions in a price list or catalogue or a list of specialized customers, or a method of bookkeeping or other office management.

Secrecy. The subject matter of a trade secret must be secret. Matters of public knowledge or of general knowledge in an industry cannot be appropriated by one as his trade secret. Matters which are completely disclosed by the goods which one markets cannot be his trade secrets. Substantially, a trade secret is known only in the particular business in which it is used. It is not requisite that only the proprietor of the business know it. He may, without losing his protection, communicate it to employees involved in its use. He may likewise communicate it to

others pledged to secrecy. Others may also know of it independently, as, for example, when they have discovered the process or formula by independent invention and are keeping it secret. Nevertheless, a substantial element of secrecy must exist, so that, except by the use of improper means, there would be difficulty in acquiring the information. An exact definition of a trade secret is not possible. Some factors to be considered in determining whether given information is one's trade secret are (1) the extent to which the information is known outside of his business; (2) the extent to which it is known by employees and others involved in his business; (3) the extent of measures taken by him to guard the secrecy of the information; (4) the value of the information to him and his competitors; (5) the amount of effort or money expended by him in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others. Novelty and prior art. A trade secret may be a device or process which is patentable, but it need not be that. It may be a device or process which is clearly anticipated in the prior art or one which is merely a mechanical improvement that a good mechanic can make. Novelty and invention are not requisite for a trade secret as they are for patentability. These requirements are essential to patentability because a patent protects against unlicensed use of the patented device or process even by one who discovers it properly through independent research. The patent monopoly is a reward to the inventor. But such is not the case with a trade secret. Its protection is not based on a policy of rewarding or otherwise

encouraging the development of secret processes or devices. The protection is merely against breach of faith and reprehensible means of learning another's secret. For this limited protection, it is not appropriate to require also the kind of novelty and invention which is a requisite of patentability. The nature of the secret is, however, an important factor in determining the kind of relief that is appropriate against one who is subject to liability under the rule stated in this Section. Thus, if the secret consists of a device or process which is a novel invention, one who acquires the secret wrongfully is ordinarily enjoined from further use of it and is required to account for the profits derived from his past use. If, on the other hand, the secret consists of mechanical improvements that a good mechanic can make without resort to the secret, the wrongdoer's liability may be limited to damages, and an injunction against future use of the improvements made with the aid of the secret may be inappropriate.

- (X) Paragraph (j) Effective dates. Change the rule to read as follows:
- (j) Compliance deadlines. Employers shall be in compliance with this section within the following time periods:
 - (i) Chemical manufacturers and importers shall label containers of hazardous chemicals leaving their workplaces, and provide material safety data sheets with initial shipments by November 25, 1985.
 - (ii) Distributors shall be in compliance with all provisions of this section applicable to them by November 25, 1985.
 - (iii) Manufacturing employers in SIC Codes 20 through 39 and state and local governments shall be in compliance with all provisions of this section by May 25, 1986, including initial training for all

current employees.

- (iv) All other employers shall be in compliance with all provisions of this section by May 25, 1987, including initial training for all current employees.
- (106) Subpart Z Occupational Health and Environmental Control, 29 CFR 1910.1450, Occupational Exposure to Hazardous Chemicals in Laboratories. Final rule as published in 55 FR (January 31, 1990) pages 3327-3335, and corrections as published in 55 FR (March 6, 1990), page 7967.
- (107) Subpart Z Occupational Health and Environmental Control, 29 CFR 1910.1499, Source of standards. New Paragraph 29 CFR 1910.1499 as published in 40 FR (May 28, 1975) page 23073 and adopted by the North Carolina Department of Labor on May 30, 1975.
- (108) Subpart Z Occupational Health and Environmental Control, 29 CFR 1910.1500, Standards organizations. New Paragraph 29 CFR 1910.1500 as published in 40 FR (May 28, 1975) page 23073 and adopted by the North Carolina Department of Labor on May 30, 1975.
- (109) Subpart Z Occupational Health and Environmental Control, 29 CFR 1990, Identification, classification, and regulation of occupational carcinogens:
 - (A) Deletion of vacated laboratory provisions, deletion of vacated standard for occupational exposure to 4,4' methylene bis (2-chloroaniline) as published in 41 FR (August 20, 1976) page 35184 and adopted by the North Carolina Department of Labor on November 1, 1976;
 - (B) Final rule 29 CFR 1990 as published in 45 FR (January 22, 1980) pages 5002-5296 and adopted by the North Carolina Department of Labor on February 4, 1980;
 - (C) Corrections to preamble 29 CFR 1990 as published in 45 FR (March 11, 1980) page 15527 and adopted by the North Carolina Department of Labor on March 26, 1980;
 - (D) Corrections 29 CFR 1990 as published in 45 FR (June 27, 1980) pages 43403-43407 and adopted by

- the North Carolina Department of Labor on August 13, 1980;
- (E) ~~Model standard pursuant to Section 6(b) of the Act, revision of Paragraph (q)(3)(ii), deletion of Paragraph (q)(3)(iii), and addition of Paragraph (q)(4)(iv) 29 CFR 1990.151 as published in 45 FR (May 23, 1980) pages 35283-35284 and adopted by the North Carolina Department of Labor on June 24, 1980;~~
- (F) ~~Model emergency temporary standard pursuant to Section 6(c), revision of Paragraphs (q)(3)(i) and (q)(3)(ii), and deletion of Paragraph (q)(3)(iii) 29 CFR 1990.152 as published in 45 FR (May 23, 1980) page 35284 and adopted by the North Carolina Department of Labor on June 24, 1980.~~
- (110) ~~Subpart Z—Occupational Health and Environmental Control, 29 CFR 1910.1048, Formaldehyde.~~
- (A) ~~Addition Footnote "1" is added to the entry "Formaldehyde" in Table Z-2 of Sec. 1910.1000 as published in 52 FR (December 4, 1987) page 46291.~~
- (B) ~~Addition New 1910.1048 including Appendices A, B, C, D and E as published in 52 FR (December 4, 1987) page 46291, with Paragraphs (m) and (p) changed as follows:~~
- (i) ~~In Paragraph (p)(1)(i) substitute the new date of August 15, 1988, for the date of February 2, 1988.~~
- (ii) ~~In Paragraph (p)(1)(ii) substitute the new date of August 15, 1988 for the date of February 2, 1988 each time it appears.~~
- (iii) ~~In Paragraph (p)(1)(ii) substitute the new date of March 15, 1989, for the date of September 1, 1988.~~
- (C) ~~29 CFR 1910.1048 has been amended by the addition of a new paragraph, (p)(2)(vi), and adds additional language at the end of 1910.1048 as published in 53 FR (March 2, 1988), page 6629.~~
- (D) ~~Amendment as published in 57 FR (May 27, 1992) pages 22307-22309 and corrections as published in 57 FR (June 10, 1992) page 24701.~~
- (111) ~~Subpart Z—Occupational Health and Environmental Control, 29 CFR 1910.1200, Hazard Communication as published in 52 FR (August 24, 1987) pages 31876-31886.~~
- (112) ~~Revocation:~~
- (A) ~~Selected general industry safety and health standards 29 CFR 1910 as published in 43 FR (October 24, 1978) pages 49726-49751 and adopted by the North Carolina Department of Labor on November 3, 1978;~~
- (B) ~~Selected special industry safety and health standards, portions of 29 CFR 1910.214, .263, and .264 as published in 43 FR (October 24, 1978) pages 49751-49767 and adopted by the North Carolina Department of Labor on November 3, 1978;~~
- (C) ~~Selected general industry safety and health standards, corrections 29 CFR 1910 as published in 43 FR (November 7, 1978) pages 41759-51760 and adopted by the North Carolina Department of Labor on December 12, 1978;~~
- (D) ~~Selected special industry safety and health standards, corrections 29 CFR 1910.263 and .264 as published in 43 FR (November 7, 1978) page 51760 and adopted by the North Carolina Department of Labor on December 12, 1978.~~
- (b) ~~Copies of the standards are available for inspection at the offices of the Occupational Safety and Health Division, North Carolina Department of Labor and may be obtained either from the division or from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.~~

Statutory Authority G.S. 95-131.

.0102 CONSTRUCTION

(a) ~~The commissioner has adopted the Occupational Safety and Health Regulations for Construction, Title 29 of the Code of Federal Regulations Part 1926.1 1926.1051 (commonly designated as 29 CFR 1926), as the same appears in Volume 30 of the Federal Register 22801-22893 (June 24, 1974), with the following additions, deletions and amendments:~~

- (1) ~~Flooring requirements 29 CFR 1926.750, as amended in 39 FR (July 2, 1974), pages 23460-24361;~~
- (2) ~~Recodification of air contaminant standards 29 CFR 1926.55, as~~

- amended in 40 FR (May 28, 1975), pages 23072-23074;
- (3) Recodification of air contaminant standards, correction 29 CFR 1926, as amended in 40 FR (June 3, 1975), page 23847;
- (4) National Electrical Code (ground fault circuit interrupters) 29 CFR 1910.309 and 29 CFR 1926.400, as amended in 41 FR (December 21, 1976), pages 55685-55704;
- (5) National Electrical Code (ground fault circuit interrupters); corrections 29 CFR 1910.309 and 1926.400 as amended in 42 FR (January 14, 1977), page 2956;
- (6) Marine operations and equipment 29 CFR 1926.605 as amended in 42 FR (July 22, 1977), page 37674;
- (7) Guardrails, handrails and covers; addition of a new Paragraph (g) 29 CFR 1926.500 as amended in 45 FR (November 14, 1980), page 75625 and adopted by the North Carolina Department of Labor on December 9, 1980;
- (8) Definitions applicable to 29 CFR 1926.500, addition of a new Paragraph (p) 29 CFR 1926.502 as amended in 45 FR (November 14, 1980), pages 75625 through 75626 and adopted by the North Carolina Department of Labor on December 9, 1980;
- (9) Addition of Appendix A to Subpart M for 1926.500(g)(1), Roof Widths 29 CFR 1926.500(g)(1) as amended in 45 FR (November 14, 1980), page 75626 and adopted by the North Carolina Department of Labor on December 9, 1980;
- (10) Revision of 1926.55 as published in 51 FR (June 20, 1986) page 22756 and adopted by the North Carolina Department of Labor on July 21, 1986;
- (11) Final rule for asbestos, tremolite, anthophyllite, and actinolite (1926.58) as published in 51 FR (June 20, 1986) page 22756 and adopted by the North Carolina Department of Labor on July 21, 1986;
- (12) Revision of 1926.151 as published in 51 FR (July 11, 1986) page 25318 and adopted by the North Carolina Department of Labor on December 8, 1986;
- (13) Revision of 1926.449 as published in 51 FR (July 11, 1986) page 25318 and adopted by the North Carolina Department of Labor on December 8, 1986;
- (14) Revision of 1926.351 as published in 51 FR (July 11, 1986) page 25318 and adopted by the North Carolina Department of Labor on December 8, 1986;
- (15) Revision of 1926.803 as published in 51 FR (July 11, 1986) page 25318 and adopted by the North Carolina Department of Labor on December 8, 1986;
- (16) Revision of Subpart K of Part 1926 as published in 51 FR (July 11, 1986) page 25318 and adopted by the North Carolina Department of Labor on December 8, 1986;
- (17) 1926.550:
 - (A) Revision as published in 52 FR (September 28, 1987) pages 36381-36382;
 - (B) Revision as published in 53 FR (August 2, 1988) pages 29139-29141;
 - (C) Redesignation of 1926.550(g)(3)(i)(D) to 1926.550(g)(3)(ii)(D) and Paragraphs (g)(3)(i)(E) through (g)(3)(i)(G) as Paragraphs (g)(3)(i)(D) through (g)(3)(i)(F) respectively as published at 54 FR (April 18, 1989) page 15406;
- (18) Revision of 1926.552 as published in 52 FR (September 28, 1987) pages 36381-36382;
- (19) Revision of 1926.903 as published in 52 FR (September 28, 1987) pages 36381-36382;
- (20) Revision of 1926.55 as published in 52 FR (December 4, 1987) page 46312;
- (21) Revision of 1926.700 as published in 53 FR (June 16, 1988) pages 22643-22644 and with amendments as published in 55 FR (October 18, 1990) page 42328;
- (22) Revision of 1926.701 as published in 53 FR (June 16, 1988) page 22644;
- (23) Revision of 1926.702 as published in 53 FR (June 16, 1988) page 22644;
- (24) Revision of 1926.703 as published in 53 FR (June 16, 1988) pages 22644-22645;
- (25) Revision of 1926.704 as published in 53 FR (June 16, 1988) page 22645;

- (26) ~~Revision of 1926.705 as published in 55 FR (October 18, 1990) pages 42328-42329;~~
- (27) ~~Revision of 1926.706 as published in 53 FR (June 16, 1988) page 22646;~~
- (28) ~~Revision of 1926.58 as published in 53 FR 35627-35629 (September 14, 1988), and corrected in 53 FR (September 23, 1988) page 37080, amended as follows:~~
 - (A) ~~In Paragraph (o)(1) change the effective date from October 14, 1988, to March 6, 1989;~~
 - (B) ~~In Paragraph (o)(2) change the action date from January 16, 1987, to June 6, 1989;~~
 - (C) ~~In Paragraph (o)(2)(i) change the action date from December 13, 1988, to May 6, 1989;~~
 - (D) ~~In Paragraph (o)(2)(ii) change the action date from March 13, 1989, to August 6, 1989;~~
 - (E) ~~In Paragraph (o)(2)(iii) change the action date from September 14, 1989, to February 6, 1990;~~
- (29) ~~Revision of Subpart D of Part 1926 and amendment of Part 1926 by the addition of 1926.59 as published in 52 FR (August 24, 1987) pages 31877-31886;~~
- (30) ~~Revision of 1926.800 as published in 54 FR (June 2, 1989) pages 23823-23857;~~
- (31) ~~Revision of Subpart P as published in 54 FR (October 31, 1989) pages 45959-45991;~~
- (32) ~~Amendment to 1926.305 as published in 55 FR (October 18, 1990) page 42328;~~
- (33) ~~Revision and relocation of portions of Subpart L and Subpart M to new Subpart X as published in 55 FR (November 14, 1990) pages 47687-47691 and amended as published in 56 FR (January 23, 1991) page 2585, 56 FR (February 7, 1991) page 5061, 56 FR (August 23, 1991) pages 41793 and 41794;~~
- (34) ~~Revision of 1926.58 as published in 57 FR (June 8, 1992) pages 24330-24331.~~
- (35) ~~Revision of Subpart D as published in 57 FR (August 10, 1992) pages 35681-35695.~~
- (36) ~~Revision of Subpart D as published in 57 FR (September 14, 1992) pages 42452-42463.~~
- (b) ~~Copies of the standards are available for~~

inspection at the offices of the division, and may be obtained either from the division or from the Federal Register, U.S. Government Printing Office, Washington, D.C. 20402.

Statutory Authority G.S. 95-131.

.0103 AGRICULTURE

(a) ~~The commissioner has adopted the Occupational Safety and Health regulations for Agriculture, Title 29 of the Code of Federal Regulations, Part 1928, as the same appears in the 40th volume of the Federal Register 18254-18267 (April 25, 1975), with the following additions, deletions and amendments:~~

- (1) ~~subpart D; safety for agricultural equipment 29 CFR 1928.51 as amended in 41 FR (March 9, 1976), pages 10190-10197;~~
- (2) ~~guarding of farm field equipment; correction part 1928, as amended in 41 FR (March 16, 1976), page 11022;~~
- (3) ~~guarding of farm field equipment; farmstead equipment, and cotton gins; deferral of effective date 29 CFR 1928.57(a)(3) and (4) as amended in 41 FR (June 2, 1976), pages 22267-22268;~~
- (4) ~~guarding of farm field equipment; farmstead equipment, and cotton gins; non-substantive editorial amendments 29 CFR 1928.57 as amended in 41 FR (October 22, 1976), page 46598;~~
- (5) ~~safety and health standards for agriculture 29 CFR 1928.21, as amended in 42 FR (July 22, 1977), page 37674;~~
- (6) ~~applicability of general industry standards to agriculture; correction non-substantive amendment 20 CFR 1928.21 as amended in 42 FR (July 29, 1977), pages 38568-38569;~~
- (7) ~~cotton dust, permanent standard 29 CFR 1928.21 as adopted in 43 FR (June 23, 1978), pages 27349-27463 and adopted by North Carolina Department of Labor on June 30, 1978;~~
- (8) ~~cotton dust, permanent standard; correction 29 CFR 1928.21 and 1928.113 as adopted in 43 FR (June 30, 1978), page 28474 and adopted by North Carolina Department of Labor on July 11, 1978;~~
- (9) ~~cotton dust, permanent standard; correction 29 CFR 1928.113 as~~

adopted in 43 FR (August 8, 1978); pages 35035 to 35042 and adopted by North Carolina Department of Labor on August 28, 1978;

- (10) ~~occupational exposure to cotton dust in cotton gins, corrections 29 CFR 1928 as adopted in 43 FR (December 5, 1978), page 56894 and adopted by North Carolina Department of Labor on December 14, 1978;~~
- (11) ~~exposure to cotton dust in cotton gins, removal of 1928.113 29 CFR 1928.113 as amended in 46 FR (June 19, 1981), pages 32021 and 32022 and adopted by the North Carolina Department of Labor on July 13, 1981;~~
- (12) ~~Subpart I General environmental controls 29 CFR 1928.110, Paragraphs b through d, as published in 52 FR (May 1, 1987) page 16095;~~
- (13) ~~Revision of authority citation for Part 1928 and amendment of Part 1928 by the revision of 1928.21 as published in 52 FR (August 24, 1987) pages 31877-31886.~~

(b) Copies of the standards are available for inspection at the offices of the divisions and may be obtained either from the division or from the office of the Federal Register, U.S. Government Printing Office, Washington, D.C. 20402.

(c) This Rule is adopted in accordance with G.S. 150B-14(b).

Statutory Authority G.S. 95-131.

.0104 FIELD SANITATION STANDARD

(a) ~~The commissioner has adopted Subpart I of the Occupational Safety and Health Regulations for Agriculture General Environmental Controls 29 CFR 1928.110 as published in 52 FR (May 1, 1987) page 16095.~~

(b) Copies of the standard are available for inspection at the offices of the division and may be obtained either from the division or from the office of the Federal Register, U.S. Government Printing Office, Washington, D.C. 20402.

Statutory Authority G.S. 95-131.

SECTION .0300 - FIELD SANITATION

.0304 APPLICABILITY

These provisions shall apply only to agricultural employers who either maintain a temporary labor camp or employ 11 or more employees. These

~~provisions do not apply to housing within temporary labor camps.~~

Statutory Authority G.S. 95-131.

.0305 DEFINITIONS

The following definitions apply:

- (1) ~~Drinking water and hand washing facilities are "accessible and available" when:~~
 - (a) ~~the employee is performing work within or immediately adjacent to a structure providing drinking water and a hand washing facility; or~~
 - (b) ~~the drinking water is located so that it is normally within two hundred yards of the employee; and~~
 - (c) ~~the hand washing facility is located in the field at the point of vehicular access customarily used by the employer; or~~
 - (d) ~~the hand washing facility is provided to the employees upon their request, by transportation provided by the employer.~~
- (2) ~~"Clean Water" means either water which is approved for drinking purposes by the local authority having jurisdiction or by the North Carolina Department of Human Resources; or, is regularly used for drinking purposes in the employer's home and if tested receives approval from the local authority or the Department of Human Resources.~~
- (3) ~~"Hand Washing Facility" means an available supply of flowing, clean water dispensed in a manner suitable for hand washing; soap, or an equally effective cleaning agent; and single use hand or roller towels. As an alternative for water and soap, an effective commercially prepared waterless hand cleaner may be used.~~

Statutory Authority G.S. 95-131.

.0306 DRINKING WATER

(a) ~~Quality, Quantity, and Location. Employers shall make clean water for drinking accessible and available at all times during the work period in sufficient quantities to agricultural employees.~~

(b) ~~Transportation and Containers. If the drinking water is transported, stored, or dispensed from a container, it shall be constructed of materials which do not endanger the quality of the water. The container shall be sanitized periodically~~

to ensure the water quality. The container shall be covered while in use, and never have been previously used for the storage of toxic substances or other contaminants. Containers or other devices used for the storage or dispensing of drinking water shall be conspicuously labeled as "Drinking Water."

(e) Dispensing. Drinking water shall be distributed to the employees through a spigot or a container designed and marketed for dispensing drinking water, together with single service cups.

Statutory Authority G.S. 95-131.

.0307 HANDWASHING

Employers shall make hand washing facilities accessible and available to agricultural employees when either toxic substances are handled or the employee's work period (including transportation time to and from the worksite) encompasses a meal or food consumption. At a minimum, one outlet of flowing, clean water shall be provided for each 25 employees or fraction thereof.

Statutory Authority G.S. 95-131.

.0308 WASTE WATER

Waste water may normally be allowed to soak into the ground, but shall not be disposed of in a manner which will contaminate water supplies, cause the water to stand on the ground so as to become stagnant, or otherwise create a safety or health hazard.

Statutory Authority G.S. 95-131.

.0309 VARIANCES

Upon application by the employer, a variance will be granted pursuant to 13 NCAC 7B .0400, RULES OF PRACTICE FOR VARIANCES where the conditions, practices, means, methods, or operations used will provide employment to the employees which is as safe and healthful as that which would prevail if the employer complied with the specifics of this standard.

Statutory Authority G.S. 95-131.

SUBCHAPTER 7D - STANDARDS INTERPRETATION

SECTION .0100 - WALKING: WORKING SURFACES

.0101 SCOPE

This Section 13 NCAC 7D .0100 contains all the currently effective interpretations of standards contained within Subpart D - Walking: Working Surfaces of Part 1910 of Title 29 of the Code of Federal Regulations.

Statutory Authority G.S. 95-136(g).

.0102 APPLICATION AND DISTRIBUTION

All rules filed within this Section are distributed to NC OSHA field personnel, supervisors and staff in the form of standards notices. The rules contained in this Section are official interpretations and represent enforcement policy regarding NC OSHA's application of safety and health rules and regulations.

Statutory Authority G.S. 95-136(g).

.0103 AISLES AND PASSAGEWAYS

(a) Standard 29 CFR 1910.22(b) applies to aisles and passageways. Where mechanical handling equipment is used, sufficient safe clearances shall be allowed for aisles, at loading docks, through doorways and wherever turns or passage must be made. Aisles and passageways shall be kept clean and in good repairs, with no obstruction across or in aisles that could create a hazard. Permanent aisles and passageways shall be appropriately marked.

(b) When aisles and passageways at the establishment are evident, i.e., they are formed by racks, machinery or any other stationary structure which cannot be moved and makes it clear that they are aisles or passageways, and if they are neat and orderly and no apparent violations exist as far as housekeeping or blocked aisleways are concerned, the establishment will not be cited for aisles and passageways not being marked.

(c) Sufficient safe clearances shall mean three feet wider than the widest load routinely transported along the aisle or passageway.

Statutory Authority G.S. 95-136(g).

.0104 GUARDRAILS AT PETROLEUM LOADING RACKS

(a) Standard 29 CFR 1910.23(e)(1) states: "Every open-sided floor or platform four feet or more above adjacent floor or ground level shall be guarded by a standard railing..."

(b) Strict interpretation of 29 CFR 1910.23(e)(1) would result in having all petroleum loading racks (and similar installations) protected with guardrails on the outside edge of the loading platform above

the top of the tank truck. Several citations have been issued for failure to have such guardrails and the Review Commission has ruled against OSHA in contested cases.

The standard does not provide that there may be a surface other than "adjacent floor or ground level" which might be within four feet of the platform floor. When loading petroleum product tank trucks, the top of the tank is adjacent to and within four feet from the floor of the platform.

The principal reason why guardrails are impractical is that truck tanks are of different configurations and the several loading hatches make it necessary for employees to be able to step from the platform (or use a runway from the platform onto the tank) at any place in order to go onto the tank. It is necessary to go onto the tank to open and close hatches and to place and remove filler spouts. Safety belts and lanyards should not be used when loading flammable liquids because the employees should be able to move freely in case of a fire.

(e) Citations should not be issued for loading rack platforms which do not have guardrails on platform sides adjacent to the top of tank trucks. Citations will be issued for such platforms occupied when there is not a truck adjacent to the platform unless effective protective measures are taken (such as using safety belts and life lines).

Statutory Authority G.S. 95-136(g).

SECTION .0200 - MEANS OF EGRESS

.0201 SCOPE

This Section 13 NCAC 7D .0200 contains all the currently effective interpretations of standards contained within Subpart E Means of Egress of Part 1910 of the Code of Federal Regulations.

Statutory Authority G.S. 95-136(g).

.0202 APPLICATION AND DISTRIBUTION

All rules filed within this Section are distributed to NC OSHA field personnel, supervisors and staff in the form of standards notices. The rules contained in this Section are official interpretations and represent enforcement policy regarding NC OSHA's application of safety and health rules and regulations.

Statutory Authority G.S. 95-136(g).

.0203 EXIT SIGNS

(a) Standard 29 CFR 1910.37(q)(6) states that

every exit sign shall be suitably illuminated by a reliable light source of not less than five foot candles on the illuminated surface. Artificial lighting giving illumination to exit signs other than the internally illuminated types shall have screens, discs, or lenses of not less than 25 square inches area made of translucent material to show red or other specified designating color on the side of approach.

(b) The terms reliable light source and artificial lights means any illumination supplied by a power company. It must, as the standards states, be not less than five foot candles on the illuminated surface.

(c) Establishments having at least five foot candles of illumination on the exit signs will be in compliance. Emergency lighting does not have to be provided to meet the requirements of this standard.

Statutory Authority G.S. 95-136(g).

SECTION .0300 - POWERED PLATFORMS: MANLIFTS AND VEHICLE-POWERED WORK PLATFORMS

.0301 SCOPE

This Section 13 NCAC 7D .0300 contains all the currently effective interpretations of standards contained within Subpart F Powered Platforms, Manlifts and Vehicle Mounted Work Platforms of Part 1910 of the Code of Federal Regulations.

Statutory Authority G.S. 95-136(g).

.0302 APPLICATION AND DISTRIBUTION

All rules filed within this Section are distributed to NC OSHA field personnel, supervisors and staff in the form of standards notices. The rules contained in this Section are official interpretations and represent enforcement policy regarding NC OSHA's application of safety and health rules and regulations.

Statutory Authority G.S. 95-136(g).

SECTION .0400 - OCCUPATIONAL HEALTH AND ENVIRONMENTAL CONTROL

.0401 SCOPE

This Section 13 NCAC 7D .0400 contains all the currently effective interpretations of standards contained within Subpart G Occupational Health and Environmental Control of Part 1910 of the

Code of Federal Regulations.

Statutory Authority G.S. 95-136(g).

.0402 APPLICATION AND DISTRIBUTION

All rules filed within this Section are distributed to NC-OSHA field personnel, supervisors and staff in the form of standards notices. The rules contained in this Section are official interpretations and represent enforcement policy regarding NC-OSHA's application of safety and health rules and regulations.

Statutory Authority G.S. 95-136(g).

.0403 OCCUPATIONAL NOISE EXPOSURE

(a) Standard 29 CFR 1910.95(b)(1) states: When employees are subjected to sound pressure levels exceeding those listed in Table G-16, feasible administrative controls shall be utilized. If such controls fail to reduce sound levels within the levels of Table G-16, personal protective equipment shall be provided and used to reduce sound levels within the levels of the table.

(b) Standard 29 CFR 1910.95(b)(3) states: In all cases where the sound levels exceed the values shown herein, a continuing, effective hearing conservation program shall be administered.

(c) All companies having employees who are overexposed according to Table G-16 of the General Industry Standards shall administer a continuing, effective hearing conservation program. This program shall include in-plant utilization of all feasible engineering and administrative controls; annual determination of employee noise doses (surveys); annual education program; issuance, proper fitting and required usage of personal hearing protection; and annual audiometric testing:

- (1) Every company having employees who are exposed to sound levels in excess of that which is allowed by Table G-16 shall utilize all feasible engineering and administrative controls. If administrative controls are utilized, such controls shall be documented.
- (2) Annual surveys to determine exposure shall be made with a standard sound level meter on the A scale (slow response) and documented. Octave band analysis may be utilized in lieu of a standard sound level meter in accordance with Table G-9.
- (3) Education or training shall be given to all exposed employees annually to

ensure awareness of the program.

- (4) If employees are exposed to noise greater than the levels permitted in Table G-16, personal hearing protection shall be used by the employees subject to the following requirements:

(A) The use of personal protective equipment to prevent occupational noise exposure of the employee in excess of the prescribed limits is authorized until feasible engineering and/or administrative controls and procedures can be implemented to maintain the occupational noise exposures within prescribed limits.

(B) Any ear protector used by an employee shall reduce the effective noise level to which he is exposed so that his noise exposure is within the limits prescribed. In order to estimate the attenuation provided, a list of personal hearing protectors and attenuation data may be found in H.E.W. Publication No. 76-120 (NIOSH) or the most current revision thereof.

- (5) Audiometric tests shall be administered annually to all employees exposed to noise in excess of the limits prescribed in Table G-16.

(d) If the recorded hearing conservation plan meets all of the requirements outlined in this Rule, a citation will not be issued. A company that does not have all of the above criteria will be cited under 29 CFR 1910.95(b)(1) and/or 29 CFR 1910.95(b)(3) whichever is appropriate. A company that establishes a continuing effective hearing conservation program during the abatement period and can show that feasible engineering and administrative controls do not presently exist, can be ruled in compliance by requesting such from the North Carolina OSHA division. The hearing conservation plan will serve as the foundation for noise control efforts and as such shall serve as the base upon which progress reports shall be submitted in the event that there is any modification of abatement date from the initial citation.

Statutory Authority G.S. 95-136(g).

.0404 PERSONAL PROTECTION FOR CYANIDE OPERATIONS

(a) Standard 29 CFR 1910.94(d)(9)(i) states: All employees working in and around open surface

tank operations must be instructed as to hazards of their respective jobs, and in the personal protection and first aid procedures applicable to these hazards.

Standard 29 CFR 1910.94(d)(9)(xi) states: First aid facilities specific to the hazards of the operations conducted shall be readily available.

Standard 29 CFR 1910.151(b) states: In the absence of an infirmary, clinic, or hospital in near proximity to the workplace which is used for the treatment of all injured employees, a person or persons shall be adequately trained to render first aid. First aid supplies approved by the consulting physician shall be readily available.

(b) Significant confusion and concern has been expressed regarding what is considered acceptable protection for personnel involved in cyanide operations. The most common industry associated with this hazard is metal plating, where open surface tanks of cyanide compounds and acids are located in close proximity to each other. The hazards associated with this type operation include cyanide absorption through handling; ingestion of cyanide from contaminated food and drink, and poor hygiene; and inhalation of hydrogen cyanide gas caused by accidental contact of any acid with the cyanide compound.

The cyanide poisoning hazard also exists in any other industry or establishment where cyanide compounds and acid or cyanide gas is present for purposes of storage or use. With these hazards in mind, the question arises as to what precautions, instructions, and equipment must an employer provide.

(c) In establishments where open surface tank cyanide operations exists, the employer must instruct employees in the following items:

- (1) the hazards of cyanides, cyanide compounds, and hydrogen cyanide;
- (2) the precautions to be taken to prevent cyanide poisoning;
- (3) the first aid equipment and procedures for treatment of employees exposed to cyanide as set forth by a physician;
- (4) the personal protective equipment necessary for normal work and emergency conditions associated with cyanide processes:
 - (A) proper storage;
 - (B) proper use;
 - (C) proper maintenance.

(d) In order to satisfy the requirements for "first aid facilities specific to the hazard," "a person or persons shall be adequately trained to render first aid," and "first aid supplies approved by the

consulting physician shall be readily available"; an employer must contact a physician and request that he specify in writing what first aid supplies, equipment, and treatment procedures are required for exposure to cyanide, and what training of plant personnel is necessary to ensure prompt treatment in case of an emergency. The written instructions of the doctor shall be maintained in the plant office or medical treatment room, with copies placed at appropriate locations throughout the plant; and shall specify that it is for treatment of victims of cyanide exposure. The employer must ensure that the procedure is properly implemented.

Any employer involved in the handling or storage of cyanide compounds and acids or cyanide gas, who does not have a written emergency treatment procedure from a physician, or who does not, in the professional opinion of the safety officer or industrial hygienist, effectively implement the procedure will be subject to citation. In cyanide operations involving open surface tanks the section of the standards violated would be 29 CFR 1910.94(d)(9)(xi). In all other operations involving cyanide the section cited would be 29 CFR 1910.151(b).

(e) Questions on the content or application of this standards notice should be directed to the safety and health engineering section of the OSHA division, North Carolina Department of Labor. Questions regarding the treatment materials and procedures for individuals exposed to cyanide should be directed to:

Shirley K. Osterhout, M.D.

Clinical Director

Duke Poison Control Center

Duke University Medical Center

P.O. Box 3007

Durham, North Carolina 27710

Emergency Calls (919) 684-8111

No emergency (919) 684-2498

Statutory Authority G.S. 95-136(g).

.0405 MEDICAL EXAMINATIONS AND ASBESTOS EXPOSURE

(a) Standard 29 CFR 1910.1001(j)(2) deals with preplacement. The employer shall provide or make available to each of his employees, within 30 calendar days following his first employment in an occupation exposed to airborne concentrations of asbestos fibers, a comprehensive medical examination, which shall include, as a minimum, a chest roentgenogram (posterior anterior 14 x 17 inches), a history to elicit symptomatology of respiratory disease, and pulmonary function tests

to include forced vital capacity (FVC) and forced expiratory volume at one second [FEV(1.0)]. Standard 29 CFR 1910.1001(j)(3) concerns annual examinations. On or before January 31, 1973, and at least annually thereafter, every employer shall provide, or make available, comprehensive medical examinations to each of his employees engaged in occupations exposed to airborne concentrations of asbestos fibers. Such annual examinations shall include, as a minimum, a chest roentgenogram (posterior-anterior 14 x 17 inches), a history to elicit symptomatology of respiratory disease, and pulmonary function tests to include forced vital capacity (FVC) and forced expiratory volume at one second [FEV(1.0)].

Standard 29 CFR 1910.1001(j)(4) deals with termination of employment. The employer shall provide, or make available, within 30 calendar days before or after the termination of employment of an employee engaged in an occupation exposed to airborne concentrations of asbestos fibers, a comprehensive medical examination which shall include, as a minimum, a chest roentgenogram (posterior-anterior 14 x 17 inches), a history to elicit symptomatology of respiratory disease, and pulmonary function tests to include forced vital capacity (FVC) and forced expiratory volume at one second [FEV(1.0)].

(b) Employers must furnish medical examinations for all employees "exposed to airborne concentrations of asbestos fibers." The phrase "exposed to airborne concentrations of asbestos fibers" is administratively interpreted by N.C. OSHA to mean exposed to a minimum of 0.1 fibers longer than five micrometers per cubic centimeter of air. North Carolina OSHA is revising its policy as set forth in this Rule.

(c) The standards in (a) of this Rule will be cited when employees are exposed to concentrations of airborne asbestos fibers in excess of 0.1 fibers longer than five micrometers per cubic centimeter of air. Exposure will be determined by taking a personal sample in the employee breathing zone for a minimum period of 15 minutes while dust is being generated and identifying asbestos fibers on the filter.

Statutory Authority G.S. 95-136(g).

.0406 LABORATORY PROVISIONS FOR CARCINOGENS

(a) Standards references are 29 CFR 1910.1003 through .1004, 29 CFR 1910.1006 through .1016, and G.S. 95-129(1) (general duty clause).

(b) As of August 20, 1976, the laboratory

provisions of the carcinogen standards [Section e(6)] were deleted due to an error in the standard promulgation procedure. No comment period was allowed for the laboratory provisions and the chemist who initially developed the standards sued OSHA for deletion of these provisions without proper review. The laboratory provisions were accepted as being minimal to protect the health and safety of laboratory workers who handle carcinogens. These provisions are applied to all of the carcinogens listed under 29 CFR 1910.1003 through .1016. As a result of the deletions, laboratories are excluded from the provisions of 29 CFR 1910.1003 through .1016. No part of these standards apply to research or quality control laboratories. However, this is not to say that the use of carcinogens in a research or quality control laboratory is not a recognized hazard. The federal court in its affirmation of the carcinogen standard ruled that carcinogens are recognizable health hazards. The improper handling of carcinogenic materials covered by the deleted sections can lead to the development of carcinoma in humans.

(c) Laboratories that handle carcinogens must follow procedures at least as effective as 29 CFR 1910.1003 through .1016 for the handling of carcinogens. If no procedures are established or the procedures are not as effective as those, a serious violation may exist in regard to a recognized hazard. This would meet the requirements for a citation under G.S. 95-129(1) (general duty clause) and shall be cited as such. The Director of the North Carolina Office of Occupational Safety and Health will determine the effectiveness of health provisions used by laboratories that may be dissimilar to those listed in 29 CFR 1910.1003 through .1016. All negative answers on the carcinogen checklist found on pages XII-46 and XII-47 in the OSHA Operations Manual should be listed in the report on the OSHA 1A. This will assist the determination of severity. Information regarding the effectiveness of differing procedures can be obtained by contacting the Safety and Health Engineering Section, Office of Occupational Safety and Health, North Carolina Department of Labor, 4 West Edenton Street, Raleigh, North Carolina 27601.

Statutory Authority G.S. 95-136(g).

.0407 COTTON DUST

(a) Standards 29 CFR 1910.1043 and 29 CFR 1910.1000 apply to cotton yarn manufacturing, and to all places where an employee is exposed to cotton dust with the exception of growing and

harvesting, ginning, maritime operations, the handling or processing of woven or knitted materials, or the handling or processing cotton which has been thoroughly washed in hot water. The policies herein are adopted by the North Carolina Department of Labor to be effective September 4, 1978.

(b) The final standard for occupational exposure to cotton dust 29 CFR 1910.1043 was issued on June 23, 1978, and becomes effective on September 4, 1978. This standard notice is intended to establish a uniform policy that NC OSHA will follow in enforcement of both 29 CFR 1910.1043 and 29 CFR 1910.1000, table Z-1, with respect to cotton dust. This notice will be revised and updated as policy changes and individual requirements of these standards take effect.

(c) Effective September 4, 1978, both table Z-1 of 29 CFR 1910.1000 and Paragraph (c)(1) of 29 CFR 1910.1043 will apply in yarn manufacturing for the determination of permissible exposure limits to cotton dust. "Yarn manufacturing" includes all operations found in a textile mill operation in which cotton is processed to form yarn. Examples of "yarn manufacturing" operations are opening, picking, carding, drawing, roving, spinning, winding, spooling, twisting, and warping.

(d) Effective September 4, 1978, 29 CFR 1910.1043(e)(2) will apply in slashing and weaving for the determination of permissible exposure limits to cotton dust.

(e) Effective September 4, 1978, 29 CFR 1910.1043(e)(3) will apply in all work operations where employees are exposed to cotton other than slashing, weaving, and yarn manufacturing for the determination of permissible exposure limits to cotton dust. Examples of work operations that fall within this category are warehousing, waste baling, knitting, delinting of cotton seed, ginning, and other processes involving cotton waste.

(f) Effective October 4, 1978, the respirators required by paragraph (f) of this standard must be provided. This applies to the five circumstances where respirators are required to be worn [29 CFR 1910.1043(f)(1)] as well as to the requirement that the employer provide any dust respirator to employees exposed to cotton dust, unless the employer has conducted monitoring [29 CFR 1910.1043(f)(2)(vi)]. Consistent with the current interpretation of 29 CFR 1910.134(a), respiratory protection under 29 CFR 1910.1043(f)(1) is required under items (i), (ii), and (iii) only where

employees are found to be exposed to cotton dust in excess of the permissible exposure limits established in 29 CFR 1910.1043(e) and 29 CFR 1910.1000. However, 29 CFR 1910.1043(f)(1)(iv) and (v) as well as 29 CFR 1910.1043(f)(2)(vi) do not require an employee overexposure as a prerequisite for requiring respiratory protection. See the enforcement policy of this notice for more details.

(g) Effective March 4, 1979, or sooner if the employer has conducted monitoring, the employer shall provide and require the use of appropriate respirators selected from table I in the standard.

(h) Effective September 4, 1978, the employer must post a copy of the cotton dust standard and its appendices in a public location at the workplace and shall, upon request, make copies available for employees.

(i) Effective March 4, 1979, or sooner if the employer has conducted monitoring, the employer shall post the appropriate warning signs in each work area where the permissible exposure limit for cotton dust is exceeded.

(j) NC OSHA's enforcement policy regarding occupational exposure to cotton dust is segmented into two categories. Category I consists of the enforcement policy of the requirements and provisions of the standard that do not require the determination of employee exposure by NC OSHA compliance officers (i.e., this category will be enforced by both safety officers and industrial hygienists). Category II consists of the enforcement policy of those requirements and provisions of the standard that shall be evaluated by the industrial hygienist:

(1) Category I

(A) Posting Requirements

(i) A citation will be issued for a violation of 29 CFR 1910.1043(i)(2)(i) when the compliance officer finds that a copy of the standard and its appendices have not been posted as required.

(ii) If the company has conducted monitoring, the compliance officer shall review the company's monitoring records [required by 29 CFR 1910.1043(k)(1)] and note those areas of the plant where the permissible exposure level is exceeded, record the appropriate cotton dust levels for those areas, and observe, during the general walkaround, whether

~~the appropriate warning signs have been posted as required. A citation will be issued for a violation of 29 CFR 1910.1043(j) where areas requiring warning signs do not have these signs posted.~~

~~(B) Respiratory Protection~~

~~(i) Effective October 4, 1978, if the company has not conducted monitoring, the compliance officer shall note those areas where employees are exposed to cotton dust and determine the number of instances and the extent that NIOSH approved respirators have been provided and are being correctly worn. A citation will be issued by the compliance officer for a violation of 29 CFR 1910.1043(f)(2)(vi) when employees are not wearing respirators where required.~~

~~(ii) If the company has conducted monitoring, the compliance officer shall review the company's monitoring records and note those areas where the PEL is exceeded; record the appropriate cotton dust levels for those areas, and observe during the general walkaround whether the appropriate respirators are being worn. If it appears that respirators have not been provided or are not being worn properly in areas where company monitoring shows them necessary, then an industrial hygienist referral will be issued. In addition, if it appears that the respirators provided are not adequate for protection of employees from exposure to cotton dust, then an industrial hygienist referral will be issued.~~

~~(2) Category II~~

~~(A) Permissible Exposure Limit (PEL)~~

~~(i) Industrial hygienists shall continue to assess compliance with the PEL for cotton dust (raw) established in table Z-1 under 29 CFR 1910.1000 in yarn manufacturing. This assessment will be performed by measuring employee exposures in accordance with the procedures~~

~~outlined in the NC-OSHA sampling data sheets in Chapter XII of the FOM. Under normal circumstances, this assessment will be concurrent with the assessment for compliance with the PEL for lint free respirable cotton dust established in 29 CFR 1910.1043(e)(1). At this time, the sampling strategy for obtaining this assessment has not been finalized. In view of this, enforcement activity with respect to 29 CFR 1910.1043(e)(1) will not be carried out until further notice is given from this office.~~

~~(ii) With respect to slashing and weaving, industrial hygienists will assess for compliance with the PEL for lint free respirable cotton dust as established in 29 CFR 1910.1043(e)(2). Since the sampling strategy for assessing this exposure has not been finalized, enforcement activity with respect to this standard will not be carried out until further notice is given from this office.~~

~~(iii) In work operations where employees are exposed to cotton dust other than in yarn manufacturing, slashing, and weaving, the industrial hygienist shall assess for compliance with the PEL for lint free respirable cotton dust as established in 29 CFR 1910.1043(e)(3). Since the sampling strategy for assessing this exposure has not been finalized, enforcement activity with respect to this standard will not be carried out until further notice is given from this office.~~

~~(iv) Effective September 4, 1978, a citation will be issued for violations of 29 CFR 1910.1000(a)(2) where employees in yarn manufacturing are found to be exposed to raw cotton dust in excess of the PEL listed in table Z-1 and when feasible engineering and administrative controls have not been instituted. Individual violations of this standard shall be grouped in~~

accordance with the policy established in Operational Procedure Notice 28 and the North Carolina OSHA Operations Manual.

(B) Respiratory Protection

- (i) Effective September 4, 1978, a citation will be issued for violations of 29 CFR 1910.134(a) when employers have failed to provide and require the use of approved respirators where employees in yarn manufacturing are found to be exposed to cotton dust levels exceeding the level established in table Z-1 of 29 CFR 1910.1000.
- (ii) Effective October 4, 1978, 29 CFR 1910.134(a) is inapplicable for cotton dust in yarn manufacturing and in all other work operations where employee exposure to cotton dust occurs. Therefore, any respiratory protection infractions accompanying 29 CFR 1910.1000 (Cotton Dust) and 29 CFR 1910.1043(e)(1), (2), and (3) violations will be cited under 29 CFR 1910.1043(f). A Citation will be issued for violations of 29 CFR 1910.1043(f)(1) when employees are found to be exposed to cotton dust exceeding the levels established in table Z-1 of 29 CFR 1910.1000, and when the employer has failed to provide and require the use of appropriate respirators in accordance with the requirements of 29 CFR 1910.1043(f)(2). Since enforcement activity with respect to 29 CFR 1910.1043(e)(1), (2), and (3) will not be carried out at this time, enforcement of the requirements under 29 CFR 1910.1043(f)(1) and 29 CFR 1910.1043(f)(2) must be modified until the sampling strategy is finalized. As an interim policy, industrial hygienists shall base evaluation of compliance with 29 CFR 1910.1043(f)(1) and 29 CFR 1910.1043(f)(2) on the company's monitoring results. If the

monitoring has not been conducted, then respirators are required under 29 CFR 1910.1043(f)(2)(vi) in all areas where employees are exposed to cotton dust.

(k) Effective September 1, 1978, the application of the cotton dust standard, 29 CFR 1910.1043, as it pertains to the cotton waste processing industries and employers who are purchasers and users of cotton batting, including employers in mattress, upholstered furniture, and automotive assembling industries, is suspended. As to all other industries, the cotton dust standard will be effective, as scheduled, on September 4, 1978.

(l) On October 3, 1978, the U.S. Court of Appeals for the District of Columbia issued an order which stays 29 CFR 1910.1043(f)(2)(vi) and 1910.1043(m)(2)(iv). In effect, this stay delays enforcement activity with respect to the entire respirator section under 1910.1043(f). NC-OSHA has elected to follow the order of the court regarding this matter. The enforcement policy will be as follows:

- (1) Category I. Since a judicial stay on respirator requirements is not in effect, only the posting requirements of the standard shall be enforced at this time. No enforcement with respect to 29 CFR 1910.1043(f) should be attempted. If this stay is lifted and no injunction against the standard is granted, then this Regulation will be revised and enforcement activity with respect to the respiratory requirements under 29 CFR 1910.1043(f) will resume.
- (2) Category II. Since the respiratory requirements of 29 CFR 1910.1043(f) have been judicially stayed indefinitely, the respiratory policy delineated in this Regulation cannot be followed. Therefore, respiratory infractions accompanying violations of 29 CFR 1910.1000 in yarn manufacturing will continue to be cited under the provisions and requirements of 29 CFR 1910.134(a) until further notice. The enforcement policy with respect to the permissible exposure limit to cotton dust remains intact.

(m) In response to the Federal Register Notice of Friday, September 1, 1978, concerning the NIOSH survey, OSHA has concluded that a permanent suspension of the cotton dust standard for the cotton waste industries is unwarranted and

that the temporary suspension issued on that date should be reseeded.

Statutory Authority G.S. 95-136(g).

.0408 LEAD

(a) ~~29 CFR 1910.1025 applies to occupational exposure to lead and 29 CFR 1910.1000 applies to lead and its inorganic compounds.~~

~~In 29 CFR 1910.1000, table Z2 has been amended by deleting the following entry: Lead and its inorganic compounds (Z37.11-1969)...0.2mg/m³.~~

~~This new standard for lead at 29 CFR 1910.1025 applies to all places where employees are exposed to lead with the exception of construction work, as defined in 29 CFR 1910.12(b), and agricultural operations covered by 29 CFR 1928. "Lead" is defined as "...metallic lead compounds, and organic lead soaps." Excluded from this definition are all other organic lead compounds. The permissible exposure limit for lead is 50 micrograms per cubic meter averaged over an eight hour period. If an employee is exposed to lead for more than eight hours in any work day, the time weighted average shall be reduced in accordance with the formula in the standard.~~

~~Other provisions and requirements in the new lead standard are exposure monitoring, methods of compliance, respiratory protection, protective work clothing, housekeeping, hygiene facilities and practices, medical surveillance, medical removal protection, training program, signs, recordkeeping, observation of monitoring, and other sections regarding effective startup dates.~~

~~(b) NC OSHA has adopted the new lead standard in the form it was published in the November 14, 1978 issue of the Federal Register. The effective date of the standard was February 1, 1979, with the various other requirements becoming effective within a period of time, as specified in the standard, after this February 1 effective date.~~

~~(c) Enforcement activity with respect to the new lead standard will be conducted in accordance with the stipulations of the court order as specified in Federal Register Volume 44, No. 50, March 14, 1979.~~

~~(d) This Rule is adopted in accordance with G.S. 150B-14(b).~~

~~(e) This Rule is adopted in accordance with G.S. 150B-14(b).~~

Statutory Authority G.S. 95-131.

SECTION .0500 - HAZARDOUS MATERIALS

.0501 SCOPE

~~This Section 13 NCAC 7D .0500 contains all the currently effective interpretations of standards contained within Subpart H Hazardous Materials of Part 1910 of the Code of Federal Regulations.~~

Statutory Authority G.S. 95-136(g).

.0502 APPLICATION AND DISTRIBUTION

~~All rules filed within this Section are distributed to NC OSHA field personnel, supervisors and staff in the form of standards notices. The rules contained in this Section are official interpretations and represent enforcement policy regarding NC OSHA's application of safety and health rules and regulations.~~

Statutory Authority G.S. 95-136(g).

.0503 SIZES FOR FLAMMABLE AND COMBUSTIBLE LIQUID CONTAINERS

(a) Standard 29 CFR 1910.106(d)(2)(iii) states that sizes for flammable and combustible liquid containers shall be in accordance with Table H-12, except that glass or plastic containers of no more than one-gallon capacity may be used for a class IA or IB flammable liquid if:

- (1) Such liquid either would be rendered unfit or its intended use by contact with metal or would excessively corrode a metal container so as to create a leakage hazard.
- (2) The user's process either would require more than one pint of a class IA liquid or more than one quart of a class IB liquid of a single assay lot to be used at one time, or would require the maintenance of an analytical standard liquid of a quality which is not met by the specified standards of liquids available, and the quantity of the analytical standard liquid required to be used in any one control process exceeds 1/16 the capacity of the container allowed under Table H-12 for the class of liquid.
- (3) The containers are intended for direct export outside the United States.

(b) Table H-12; maximum allowable size of containers and portable tanks:

Container Type	Flammable Liquids	
	Class IA	Class IB
Glass or approved plastic	1 pt.	1 qt.
Metal (other than Department of Transportation drums)	1 gal.	5 gal.
Safety cans	2 gal.	5 gal.
Metal drums (Department of Transportation specification)	60 gal.	60 gal.
Approved portable tanks	660 gal.	660 gal.

Container Type	Combustible Liquids		
	Class IC	Class II	Class III
Glass or approved plastic	1 pt.	1 pt.	1 pt.
Metal (other than Department of Transportation drums)	5 gal.	5 gal.	5 gal.
Safety cans	5 gal.	5 gal.	5 gal.
Metal drums (Department of Transportation specification)	60 gal.	60 gal.	60 gal.
Approved portable tanks	660 gal.	660 gal.	660 gal.

(c) Underwriters' Laboratories, Inc., has approved (listed) a plastic safety can. The cans vary in capacity from one pint to five gallons, and have printed on the side of the container the materials approved to be stored in the container. Factory Mutual Engineering Corporation has listed a glass fiber reinforced plastic container suitable for bulk storage of gasoline, fuel oil and diesel fuel. No containers have been listed by Factory Mutual for use with similar quantities of flammable liquids, such as those listed in Table H-12.

(d) Since plastic containers, larger than the sizes listed in Table H-12 have been approved for the storage of flammable and combustible liquids, we will not issue citations to firms using plastic containers larger than the sizes allowed by Table H-12 if they have been approved by Underwriters' Laboratories, Inc. or Factory Mutual Engineering Corporation.

Statutory Authority G.S. 95-136(g).

.0504 CLASS I: DIVISION 2 HAZARDOUS LOCATIONS FOR SPRAY PAINTING

(a) Standard 29 CFR 1910.107(e)(2) states that there shall be no open flame or spark producing equipment in any spraying not within 20 feet thereof, unless separated by a partition.

(b) Standard 29 CFR 1910.107(e)(6) specifies that electrical wiring and equipment not subject to deposits of combustible residues but located in a spraying area as herein defined shall be of

explosion-proof type approved for class I, group D locations and shall otherwise conform to the provisions of subpart S of this part, for class I, division 1 hazardous locations. Electrical wiring, motors, and other equipment outside of but within 20 feet of any spraying area, and not separated therefrom by partitions, shall not produce sparks under normal operating conditions and shall otherwise conform to the provisions of subpart S of this part of class I, division 2 hazardous

locations.

(e) ~~National Electrical Code, Article 516-2(b) states that all space within 20 feet horizontally in any direction from the open face of a spray booth; and all space within the room but beyond the limits for class I, division 1 as defined in Section 516-2(a) for extensive open spraying, for dip tanks and drain boards and for other hazardous operations, shall be considered to be class I, division 2 locations unless the authority having jurisdiction judges otherwise.~~

(d) ~~The 1975 National Fire Code in NFPA 33 specifies both vertical and horizontal distances, measured from the front of the booth or room, which are to be considered as class I, division 2 hazardous locations. The distances, specified by the 1974 Code, are different from the ones quoted in (a), (b) and (c) of this Rule. Whether a firm may use the distances specified by the 1975 NFPA 33 depends upon whether or not condition (1) or (2) taken from NFPA 33 is met. The class I, division 2 locations shall extend from the open face or open front of the spray booth or room in accordance with the following:~~

(1) ~~If the ventilation system is interlocked with the spraying equipment so as to make the spraying equipment inoperable when the ventilating system is not in operation, the space shall extend five feet horizontally from the open face or open front of the booth or room, and three feet vertically above the booth or room within that five foot space.~~

(2) ~~If the ventilation system is not interlocked with the spraying equipment so as to make the spraying equipment inoperable when the ventilation system is not in operation, the space shall extend 10 feet horizontally from the open face or open front of the booth or room, and three feet vertically above the booth or room within that five foot room.~~

(e) ~~Since the NFPA has revised the distances from the spraying area to be considered class I, division 2 locations and since the NFPA is considered as an authority regarding fire protection, we will not cite per distances quoted under (a), (b) and (c) of this Rule. We will use the distances listed under (d)(1) and (d)(2) of this Rule as the extent of a class I, division 2 area. The employer will be informed of the standards quoted and the required distances, and also informed of the new (1975) NFPA distances. Citations will not be issued if the employer meets~~

~~the revised distances.~~

Statutory Authority G.S. 95-136(g).

.0505 SINKS USED FOR CLEANING OPERATIONS

(a) ~~Standard 29 CFR 1910.108 (definition) defines a dip tank. Dip tank shall mean a tank, vat, or container of flammable or combustible liquid in which articles or materials are immersed for the purpose of coating, finishing, treating, or similar processes.~~

(b) ~~There has been confusion as to whether sinks containing flammable or combustible liquids used for cleaning of parts are "dip tanks" under section 29 CFR 1910.108(a)(1).~~

(c) ~~Dip tanks are described in great detail in section 29 CFR 1910.108. These specifications indicate that dip tanks are not of the same nature as sinks containing flammable and combustible liquids used for parts cleaning, which are therefore not subject to section 29 CFR 1910.108. The handling and storage of flammable and combustible liquids are covered by section 29 CFR 1910.106.~~

Statutory Authority G.S. 95-136(g).

.0506 TRANSPORTATION OF EXPLOSIVES: PERSONNEL AND BLASTING CAPS

~~A standards notice has been developed to define NC OSHA policy regarding transportation of explosives, personnel and blasting caps. The interpretation applies to both general industry and construction. The notice appears at 13 NCAC 7E .1903 because its primary application will be in construction.~~

Statutory Authority G.S. 95-136(g).

SECTION .0600 - PERSONAL PROTECTIVE EQUIPMENT

.0601 SCOPE

~~This Section 13 NCAC 7D .0600 contains all the currently effective interpretations of standards contained within Subpart I -- Personal Protective Equipment of Part 1910 of Title 29 of the Code of Federal Regulations.~~

Statutory Authority G.S. 95-136(g).

.0602 APPLICATION AND DISTRIBUTION

~~All rules filed within this Section are distributed~~

to NC OSHA field personnel, supervisors and staff in the form of standards notices. The rules contained in this Section are official interpretations and represent enforcement policy regarding NC OSHA's application of safety and health rules and regulations.

Statutory Authority G.S. 95-136(g).

.0603 EYE PROTECTION FOR STAPLE GUNS

(a) ~~Standard 29 CFR 1910.133(a)(1) requires protective eye and face equipment where there is a reasonable probability of injury that can be prevented by such equipment. In such case, employers shall make conveniently available a type of protector suitable for the work to be performed, and employees shall use such protectors.~~

(b) ~~The term reasonable probability of injury requires a high degree of professional judgement. Care should be taken to determine the degree of hazards that exist, using as a guide, the policy of interpretation of (c) of this Rule.~~

(c) ~~Eye and face protective equipment may not be required while using staple guns if the following conditions of (1) or (2) plus (3) of this Subsection are met:~~

- ~~(1) The stapler is equipped with a safety trigger and/or safety feet, and the safety devices are operative and will prohibit the stapler from being able to freely discharge staples.~~
- ~~(2) Light duty hand staple guns are used which will not, with sufficient force, eject staples on a horizontal plane to penetrate a sheet of ordinary (16-pound basis weight) paper at a distance of two feet, unless employees are working within three feet facing each other.~~
- ~~(3) The company has an effective safety program with disciplinary action for preventing "horseplay" and mishandling by employees using the guns.~~

The criteria in this Rule should also be used as discretionary guidelines in the evaluation of eye and face protective equipment needs for stapler use in all industries.

Statutory Authority G.S. 95-136.

.0604 RESPIRATORS

(a) ~~The purpose of this notice is to clarify the situations in which a safety officer may cite for respirator violations and respirator program violations under 29 CFR 1910.134, .1000, and~~

~~.94.~~

~~(b) Safety officers may cite for not wearing adequate respirators and/or not having an acceptable respirator program if the standards being cited are not dependent on an employee being exposed to a toxic material exceeding the threshold limit value (TLV) as listed in 29 CFR 1910.1000 table Z1, Z2, Z3; and 29 CFR 1910.1001. Violations of standards pertaining to the following would be cited:~~

- ~~(1) respirators provided for emergency use.~~
- ~~(2) employees exposed to carcinogens in solid or liquid mixtures containing more than the allowed percent by weight or volume.~~
- ~~(3) when an employee is an abrasive blasting operator inside of a blast cleaning room or when using silica sand in manual blasting operations where the nozzle and blast are not physically separated from the operator in an exhaust ventilated enclosure.~~

~~(c) An exception to (b) of this Rule is that safety officers may also cite for sanitary violations of a respirator program any time that employees are exposed to materials having a threshold limit value.~~

~~(d) When an employee is exposed to a toxic substance which has a threshold limit value, a referral will be made in either of the following instances by the safety officer:~~

- ~~(1) Respirators are being worn by employees:~~
 - ~~(A) Because of the potential medical problems which can be caused by wearing respirators, respirators should not be worn unless an employee is overexposed, and then only as a temporary means of protection while engineering controls are being implemented. Air samples must be taken by an industrial hygienist to determine if an employee is overexposed;~~
 - ~~(B) If employees are wearing respirators, the safety officer should recommend that the employer implement an effective respirator program until it can be determined whether or not employees are overexposed.~~
- ~~(2) Employees are not wearing respirators and the safety officer believes that an employee may be exposed to toxic substances exceeding the threshold limit~~

value.

Statutory Authority G.S. 95-136(g).

.0605 EYE AND FACE PROTECTION

(a) ~~29 CFR 1910.133(a)(1) requires protective eye and face equipment where there is a reasonable probability of injury that can be prevented by such equipment. In such cases, employers shall make conveniently available a type of protector suitable for the work to be performed, and employees shall use such protectors. No unprotected person shall knowingly be subjected to a hazardous environmental condition. Suitable eye protectors shall be provided where machines or operations present the hazard of flying objects, glare, liquids, injurious radiation, or a combination of these hazards.~~

(b) ~~The phrase "reasonable probability of injury that can be prevented by such equipment" has often been misinterpreted to mean "reasonable probability of injury."~~

~~29 CFR 1910.133(a)(1) requires the use of eye and face protection equipment where such equipment could reasonably be expected to prevent eye and face injuries from hazards which are apparent in a given work environment.~~

~~To substantiate a violation of 29 CFR 1910.133(a)(1) it is not necessary to show that eye injuries have occurred or are occurring with a given frequency. It is sufficient to show that, if eye and face protection is used, it is reasonably predictable that eye and face injuries from observed hazards can be prevented. It is important to note, however, that documentation of injury associated with a specific condition (employer injury and illness records, employee interviews, etc. or industry statistics) must be provided as supportive data whenever it is available.~~

~~With regard to pneumatic fastening tools, the use of safety devices to prevent accidental discharge can provide protection against the hazard of the fastener itself if the safety device is properly used and maintained. However, tool safety devices may provide no protection from ricocheting fasteners, flying splinters, or particles displaced by exhaust air. The complete operation must be observed and analyzed to determine if an eye injury hazard exists due to the tool, the fastener, the workpiece, the operation, or any other factor. If an eye injury hazard exists, then a citation should be recommended.~~

~~(e) Eye protection shall be required where there is a reasonable probability that injury could be prevented by such protection. Standards Notice 8,~~

~~dated April 8, 1975, is superseded by this notice.~~

Statutory Authority G.S. 95-136(g).

.0606 FALL PROTECTION

(a) ~~This Rule is provided to reduce the confusion and uncertainty involved in identifying and citing fall hazards and adequate fall protection in general industry. There are many standards on guardrails, personal protective equipment, and other safety devices for general application as well as specific situations such as powered platforms and telecommunications. Some of the standards covering fall protection are 29 CFR 1910.23(e)(1), 29 CFR 1910.23(e)(3), 29 CFR 1910.28(a), and 29 CFR 1910.132(a). Many other specific standards are present in 29 CFR 1910 covering particular equipment, operations, or applications for fall protection measures; they are too numerous and varied to be listed or address individually.~~

(b) ~~In general, any operation or situation in which an employee is or may be exposed to a potential fall of four feet or more requires some form of protection, unless otherwise specified in the standards, such as scaffold platforms. Protection against falling must be provided in any situation where an employee may fall on or into dangerous equipment or operations, regardless of height. Proper guarding normally consists of a standard railing [top rail, midrail, and toeboard (where required)] or equivalent, or safety belt and properly secured lifeline. Special hazards may require additional protection, such as screens or solid barriers. In making an inspection where hazards are present, the first step is to determine whether the protection, if any, is adequate to prevent an accident associated with the fall hazard. In recommending a citation the safety officer must determine if a special fall protection standard is involved or whether the general guidelines apply.~~

(c) ~~This Rule is further provided to reduce the misunderstanding and enforcement problems associated with fall protection requirements in the construction industry as well as general industry. Again there are many standards for dealing with specific fall hazards and some general coverage standards for handling most operations. Examples are 29 CFR 1926.28(a), 29 CFR 1926.104(a), 29 CFR 1926.105(a), 29 CFR 1926.451(a)(4), and 29 CFR 1926.500(d)(1).~~

(d) ~~The general guidelines in construction for fall protection are contained in 1926.28(a) requiring protection in any situation where the hazard of falling is reduced by personal protective equipment; 1926.451(a)(4) requiring protection on~~

scaffold platforms more than 10 feet above the adjacent surface or less for scaffolds less than 45 inches in minimum horizontal dimension; and 1926.500(d)(1) requiring protection on any open sided floor or platform six feet or more above adjacent surfaces. Where fall hazards related to special conditions such as floor or wall openings, fixed ladders, powered platforms, etc., are encountered then the standards applicable to those hazards shall be applied. In all other construction situations the general guideline standards listed above may be used. For fall protection requirements related to steel erection operations see the latest revision of Rule 13 NCAC 7E .1603, March 21, 1977. For citation guidelines for flat roof operations see Rule 13 NCAC 7E .1103, July 15, 1976, and for sloped roof work see Rule 13 NCAC 7E .1003, July 15, 1976.

Statutory Authority G.S. 95-136(g).

SECTION .0700 - GENERAL ENVIRONMENTAL CONTROLS

.0701 SCOPE

This Section 13 NCAC 7D .0700 contains all the currently effective interpretations of standards contained within Subpart J - General Environmental Controls of Part 1910 of Title 29 of the Code of Federal Regulations.

Statutory Authority G.S. 95-136(g).

.0702 APPLICATION AND DISTRIBUTION

All rules filed within this Section are distributed to NC OSHA field personnel, supervisors and staff in the form of standards notices. The rules contained in this Section are official interpretations and represent enforcement policy regarding NC OSHA's application of safety and health rules and regulations.

Statutory Authority G.S. 95-136(g).

.0703 TOILET FACILITIES IN LABOR CAMPS

(a) Standards

- (1) 29 CFR 1910.142(d)(4) requires that: Where the toilet rooms are shared, such as in multifamily shelters and in barracks type facilities, separate toilet rooms shall be provided for each sex. These rooms shall be distinctly marked "for men" and "for women" by signs printed in English and in the native language of the persons occupying the camp, or marked with easily understood pictures or symbols. If the facilities for each sex are in the same building, they shall be separated by solid walls or partitions extending from the floor to the roof or ceiling.
- (2) 29 CFR 1910.142(d)(5) states: Where toilet facilities are shared, the number of water closets or privy seats provided for each sex shall be based on the maximum number of persons of that sex

which the camp is designed to house at any one time, in the ratio of one unit to each 15 persons, with a minimum of two units for any shared facility.

- (3) ~~29 CFR 1910.142(d)(6) states: Urinals shall be provided on the basis of one unit or two linear feet of urinal trough for each 25 men.~~

(b) ~~Questions have been raised by employers, OSHA consultants, OSHA enforcement personnel, and other government agency personnel regarding interpretation of the standards for toilet and urinal facilities in temporary labor camps. The questions basically involve when and how many fixtures are required. The complicating factors are that temporary camps involve housing of personnel and families for 24 hour per day periods, and facilities must account for this and the transient nature of the occupation.~~

(c) ~~Based on the implied definition of "shared" under 1910.142(d)(4) as "multifamily shelters and barracks type facilities," and according to 1910.142(d)(5), there must be "a minimum of two toilet units for any shared facility." In application of these sections, any labor camp situation in which more than one family, or more than one employee of different families and of the same or opposite sex share toilet facilities, there must be a minimum of two toilet units. In determining the total number of toilets required for a camp, a ratio of one unit for each 15 persons will be followed, with a minimum of two units for any shared facility. A toilet unit used by only one family is not a shared facility.~~

~~Examples: (1 toilet = 1 privy hole)~~

1 family of 15 or less	1 toilet
1 family of 16 people	2 toilets
2 families totaling 30 people	2 toilets (1 women, 1 men)
2 to 15 employees (male or female of different families)	2 toilets (separate for men and women)
30 employees with no more than 15 of either sex	2 toilets (separate for men and women)
16 men and 1 woman	3 toilets (2 men, 1 women)

~~In regard to urinals, one unit or two linear feet of urinal trough shall be provided, in addition to the basic toilet requirements, for each 25 men housed in any camp. A toilet or one privy seat may be substituted for each urinal or two feet of urinal trough, as long as the basic toilet requirement is met.~~

~~Examples:~~

2 to 24 men	0 urinals
25 to 49 men	1 urinal
50 to 74 men	2 urinals

~~Urinals may be located in the toilet room or privy or may be in separate buildings.~~

(d) ~~Questions on the content or application of this standards notice should be directed to the safety and health engineering section of the OSHA division, North Carolina Department of Labor.~~

Statutory Authority G.S. 95-136(g).

.0704 CONSUMPTION OF FOOD AND BEVERAGES IN HAZARDOUS AREAS

(a) ~~29 CFR 1910.141(g)(2) requires that no employee shall be allowed to consume food or beverages in a toilet room nor in any area exposed to a toxic material.~~

~~In 29 CFR 1910.141(a)(2)(viii) "toxic material" means a material in concentration or amount which exceeds the applicable limit established by a standard, such as 1910.1000 and 1910.1001, or, in the absence of an applicable standard, which is of such toxicity so as to constitute a recognized hazard that is causing or likely to cause death or serious physical harm.~~

(b) ~~A considerable degree of uncertainty and concern has been expressed regarding the conditions necessary for a violation of 29 CFR 1910.141(g)(2) to exist as well as the relevancy of the definition of "toxic material" as it relates to an ingestion hazard. This standards notice is intended to establish a uniform policy that NC-OSHA will follow in enforcement of 29 CFR 1910.141(g)(2) as it relates to toxic air contaminants or other toxic substances.~~

(c) ~~The definition of "toxic material" given in A.1 is relevant only when hazards of airborne concentrations are present. Furthermore, a determination of airborne levels in excess of those listed in 29 CFR 1910.1000 by itself is insufficient~~

justification for citing a violation of 29 CFR 1910.141(g)(2) where food is consumed in that area. Also the fact that the threshold limit value is not exceeded is not justification to state that there is no hazard or that there is no violation. Where a substance is either listed in 29 CFR 1910.1000 or is a recognized toxic substance, the basis for a violation of 29 CFR 1910.141(g)(2) shall be that employees are exposed to an ingestion hazard as a result of the consumption of food or beverages that are likely to be contaminated with that substance.

(d) 29 CFR 1910.141(g)(2) will be cited when employees are exposed to an ingestion hazard as a result of consuming food or beverages that are likely to be contaminated with a toxic substance. The basis for a toxic substance presenting an ingestion hazard shall be thoroughly documented. The likelihood of contamination shall be considered as well as appropriate toxicological factors. Also, consideration shall be given to the following:

- (1) the absorptivity of the toxic substance or the food-toxic substance combination through the gastrointestinal system to the blood or lymphatic system;
- (2) the metabolism or chemical action on the toxic substance that may increase or decrease its toxicity to the human body;
- (3) the potential for the toxic substance to reach target organs or sites where it can induce a response;
- (4) the absorptivity and retentivity of the toxic substance in body tissues and/or organs; and
- (5) other factors pertinent to the toxicity of a substance through ingestion to the body.

(e) For substances (e.g., lead, mercury, etc.) likely to cause death or serious physical harm due to the ingestion hazard presented by the consumption of food or beverage contaminated with any one of these substances, a violation of 29 CFR 1910.141(g)(2) shall be classified as serious. For other substances, a violation of 29 CFR 1910.141(g)(2) may be classified as serious or non-serious depending on the conditions and circumstances related to the specific situation.

Statutory Authority G.S. 95-131.

SECTION .0800 - MEDICAL AND FIRST AID

.0801 SCOPE

This Section 13 NCAC 7D .0800 contains all the

currently effective interpretations of standards contained within Subpart K—Medical and First Aid of Part 1910 of Title 29 of the Code of Federal Regulations.

Statutory Authority G.S. 95-136(g).

.0802 APPLICATION AND DISTRIBUTION

All rules filed within this Section are distributed to NC-OSHA field personnel, supervisors and staff in the form of standards notices. The rules contained in this Section are official interpretations and represent enforcement policy regarding NC-OSHA's application of safety and health rules and regulations.

Statutory Authority G.S. 95-136(g).

.0803 FIRST AID

(a) Standard 29 CFR 1910.151(b) states that in the absence of an infirmary, clinic, or hospital in near proximity to the workplace which is used for treatment of all injured employees, a person or persons shall be adequately trained to render first aid. First aid supplies approved by the consulting physician shall be readily available.

(b) No person must be trained to administer first aid to be in compliance with this standard when the establishment is located within 15 minutes travel to an infirmary, clinic, hospital or doctor's office. Fifteen minutes travel time or less will be construed as being in near proximity.

(c) This standard will be cited when employers do not have sufficient approved first aid supplies regardless of the travel distance to an infirmary, clinic, hospital or doctor's office of the inspection site.

Statutory Authority G.S. 95-136(g).

SECTION .0900 - FIRE PROTECTION

.0901 SCOPE

This Section 13 NCAC 7D .0900 contains all the currently effective interpretations of standards contained within Subpart L—Fire Protection of Part 1910 of Title 29 of Code of Federal Regulations.

Statutory Authority G.S. 95-136(g).

.0902 APPLICATION AND DISTRIBUTION

All rules filed within this Section are distributed to NC-OSHA field personnel, supervisors and staff in the form of standards notices. The rules

contained in this Section are official interpretations and represent enforcement policy regarding NC-OSHA's application of safety and health rules and regulations.

Statutory Authority G.S. 95-136(g).

SECTION .1000 - COMPRESSED GAS AND COMPRESSED AIR EQUIPMENT

.1001 SCOPE

This Section 13 NCAC 7D .1000 contains all the currently effective interpretations of standards contained within Subpart M - Compressed Gas and Compressed Air Equipment of Part 1910 of Title 29 of the Code of Federal Regulations.

Statutory Authority G.S. 95-136(g).

.1002 APPLICATION AND DISTRIBUTION

All rules filed within this Section are distributed to NC-OSHA field personnel, supervisors and staff in the form of standards notices. The rules contained in this Section are official interpretations and represent enforcement policy regarding NC-OSHA's application of safety and health rules and regulations.

Statutory Authority G.S. 95-136(g).

SECTION .1100 - MATERIALS HANDLING AND STORAGE

.1101 SCOPE

This Section 13 NCAC 7D .1100 contains all the currently effective interpretations of standards contained within Subpart N - Materials Handling and Storage of Part 1910 of Title 29 of the Code of Federal Regulations.

Statutory Authority G.S. 95-136(g).

.1102 APPLICATION AND DISTRIBUTION

All rules filed within this Section are distributed to NC-OSHA field personnel, supervisors and staff in the form of standards notices. The rules contained in this Section are official interpretations and represent enforcement policy regarding NC-OSHA's application of safety and health rules and regulations.

Statutory Authority G.S. 95-136(g).

.1103 ELEVATABLE CONTROLS FOR INDUSTRIAL TRUCKS

(a) Standard 29 CFR 1910.178(m)(12) states that whenever a truck is equipped with vertical only or vertical and horizontal controls elevatable with the lifting carriage or forks for lifting personnel, the following additional precautions shall be taken for the protection of personnel being elevated:

- (1) Use of a safety platform firmly secured to the lifting carriage and/or forks;
- (2) Means shall be provided whereby personnel on the platform can shut off power to the truck;
- (3) Such protection from falling objects as indicated necessary by the operating conditions shall be provided.

(b) Before any of the additional precautions [(a)(1), (2) and (3) of this Rule] can be required of an establishment being inspected, it must be ascertained that the controls are elevatable with the lifting carriage or forks. If the controls are not elevatable with the lifting carriage or forks, then the establishment will not be cited under the standard.

Statutory Authority G.S. 95-136(g).

.1104 CHOCKS AND BLOCKS FOR POWERED INDUSTRIAL TRUCKS

(a) Standard 29 C.F.R. 1910.178(k)(1) specifies that brakes of highway trucks shall be set and wheel chocks placed under the rear wheels to prevent the truck from rolling while they are boarded with powered industrial trucks.

(b) Standard 29 C.F.R. 1910.178(m)(7) specifies that brakes shall be set and wheel chocks shall be in place to prevent movement of trucks, trailers or railroad cars while loading or unloading. Fixed jacks may be necessary to support a semitrailer during loading or unloading when the trailer is not coupled to a tractor. The flooring of trucks, trailers, and railroad cars shall be checked for breaks and weakness before they are driven into.

(c) Previous NC-OSHA policy indicated that based on coverage by the Interstate Commerce Commission (ICC), OSHA would not enforce the requirements of 1910.178(k)(1) and 1910.(m)(7) unless evidence indicated that the trucks involved were not used in interstate commerce or transportation of hazardous materials. Based on recent inquiries, further research indicated that a change in policy was necessary. ICC and DOT regulations apply to the motor carrier not to the manufacturer or receiving employer. In the case of trucking companies, the regulations would apply. Generally, the ICC and DOT do not make inspections at loading platforms of companies that

do not operate their own highways trucks. The regulations of these agencies are intended to apply to the motor carriers and the material packagers.

(d) To ensure adequate employee safety, effective April 1, 1981, NC OSHA will resume enforcement of 1910.178(k)(1) and 1910.(m)(7) (chocking requirements) where powered industrial trucks are used to load or unload trucks and trailers.

Statutory Authority G.S. 95-136(g).

.1105 CONVERSION: MODIFICATION: ADDITION TO INDUSTRIAL TRUCKS

(a) This Rule applies to the conversion of, modification of, and addition to industrial trucks within the following standards: 29 CFR 1910.178(a), (d), (o), and (q).

(b) "Conversion" means changing an industrial truck from one type to another type having a higher level fire and explosion protection rating. Conversion normally requires modification of existing truck components and addition of others to provide a desired level of fire and explosion protection.

"Modification" is the slight alteration or changing of a preexisting part of an industrial truck which may affect the truck's safe operation or capacity.

"Addition" is the temporary or permanent attachment of material or equipment to an industrial truck which may affect its safe operation or capacity.

(c) The following information must be considered in evaluating conversions, modifications, and additions to industrial trucks:

- (1) OSHA regulations under Paragraph 29 CFR 1910.178(a)(4) do not prohibit conversion of industrial trucks from one type to another, but do require prior written approval by the manufacturer.
- (2) Paragraph 29 CFR 1910.178(d) and 29 CFR 1910.178(q)(12) of the OSHA standards permit the conversion of type G trucks to type LP or LPS and the use of such converted trucks in any area requiring type G, GS, LP, or LPS trucks. The conversion must be made through the use of approved equipment and recommended installation procedures, and must meet the appropriate standard requirements for the converted truck.
- (3) In many cases there is little difference in the basic truck unit for type G and

GS, LP and LPS, G/LP and GS/LPS, or D and DS trucks; therefore, conversion from type G to GS, LP to LPS, G/LP to GS/LPS, and D to DS trucks often is carried out by industrial truck dealers, service shops, or large user companies with parts and instructions provided by the manufacturer.

- (4) The latest edition of NFPA 505 prohibits the conversion of type G to GS, LP to LPS, or G/LP to GS/LPS trucks. No explanation is provided in NFPA 505 and type D and E truck conversions are not addressed.
- (5) Some types of industrial trucks are not capable of being converted without complete remanufacture. An example is conversion from type E to EX.
- (6) When an industrial truck acceptable for a specific location is obtained, it may still pose a hazard due to normal wear, improper operation, inadequate maintenance, or other physical damage. As an example, a type EX truck generally cannot be safely maintained by anyone other than the manufacturer, and service of any of the specifically required fire protection items on type EX or lesser type trucks for hazardous locations may void the testing laboratory approval.

(d) Paragraph 29 CFR 1910.178(a)(4) does not prohibit modification or addition to industrial trucks as long as prior written approval is obtained from the manufacturer. This paragraph also requires the operation, maintenance, and capacity labels, decals, and plates to be appropriately changed to indicate the truck's altered condition. Paragraph 29 CFR 1910.178(a)(5) requires the user to request that modifications and additions, other than factory installed, be identified and the weight of the truck and attachment combination be marked on the truck. The source standard for this paragraph, ANSI B56.1, requires the capacity of the truck and attachment combination be marked on the truck.

Paragraph 29 CFR 1910.178(q)(6) requires that industrial trucks not be altered except as approved by the manufacturer or in accordance with instructions of specific recognized standards. Paragraph 29 CFR 1910.178(o)(4) requires that special care be exercised when handling a load with an industrial truck equipped with attachments, and trucks equipped with attachments shall be

treated as partially loaded trucks even when no material is being handled.

(e) In determining what type of industrial truck is required, first classify the truck operating areas involved and determine if these area classifications can be reduced by process changes, equipment repair or modifications, or by improved housekeeping. If such changes in the classification of the trucks operating area can be made, then the inspector shall inform the employer of these facts and the type of industrial trucks required with and without the changes. The type of truck required must be determined on the basis of the most hazardous conditions to which each truck is likely to be exposed. Once the type of industrial truck required has been determined, the employer must decide whether a new industrial truck must be purchased or an existing truck may be converted. Prior to undertaking the conversion of an industrial truck from one fire and explosion protection type to another, the manufacturer's approval and recommendations for accomplishing the conversion must be sought. In the absence of the manufacturer's approval, a licensed professional engineer with knowledge of the safety and engineering principles involved must certify that the design of the modified truck complies with the requirements of applicable, nationally recognized standards for such equipment. In order to make such a certification of conversion, testing must be conducted in accordance with applicable standards. Testing may be conducted by a nationally recognized testing laboratory or the certifying engineer in accordance with procedures set forth in applicable Underwriters Laboratories, Factory Mutual Research, and American National Standards Institute standards. The engineer must also establish guidelines for safe application, operation, and maintenance of the converted machine. Appropriate label, tag, and decal changes shall be made to the converted truck. A written record of certification and procedures, verified by the employer, shall be maintained at the worksite and be made available to the inspector upon request.

Prior to modifying or adding to an industrial truck, as defined in Part (b) of this Rule, the manufacturer's approval and recommendations shall be sought. As with conversion of industrial trucks, if the manufacturer of the truck or the attachment will not provide an appropriate approval as to the safe modification or addition to the basic truck, then a licensed professional engineer, familiar with the principles and safety requirements involved, must certify the change in

accordance with ANSI B56.1 or other recognized equipment standards. A copy of this certification and applicable test data on the altered equipment must be verified by the employer and be available to the OSHA inspector upon request.

All industrial trucks which have been converted, modified, or added to shall be operated and maintained in accordance with the requirements of the OSHA standards for the specific truck type, configuration, and conditions of use.

Any conversion, modification, or addition to an industrial truck may be carried out by the manufacturer, the dealer, the authorized service shop, the user, or a qualified service contractor, as long as the requirements of this standards notice are met.

Certification of proper conversion, modification, or addition to an industrial truck does not preclude citation of an employer for improper use, maintenance, or operation.

Statutory Authority G.S. 95-136(g).

SECTION .1200 - MACHINERY AND MACHINE GUARDING

.1201 SCOPE

This Section 13 NCAC 7D .1200 contains all the currently effective interpretations of standards contained within Subpart O Machinery and Machine Guarding of Part 1910 of Title 29 of the Code of Federal Regulations.

Statutory Authority G.S. 95-136(g).

.1202 APPLICATION AND DISTRIBUTION

All rules filed within this Section are distributed to NC OSHA field personnel, supervisors and staff in the form of standards notices. The rules contained in this Section are official interpretations and represent enforcement policy regarding NC OSHA's application of safety and health rules and regulations.

Statutory Authority G.S. 95-136(g).

.1203 MECHANICAL POWER PRESSES

(a) Under standards 29 CFR 1910.217(a)(2) and (d)(1), certain substantive requirements of 29 CFR 1910.217(b), (c) and (d) came into effect on August 31, 1974 with respect to presses installed prior to August 13, 1971. Portions of 29 CFR 1910.217(b), (c), and (d) are the subjects of proposed revocations or modifications, and final rule will be promulgated in the near future.

(b) ~~Delay enforcement of these requirements which came into effect on August 31, 1974, pending promulgation of the final standard. It should be noted, however, that the machine guarding requirements of 29 CFR 1910.212(a) remain in effect and should continue to be enforced.~~

Statutory Authority G.S. 95-136(g).

1204 PRESS BRAKES

(a) ~~Press brakes, hydraulic and pneumatic power presses, bulldozers, hot bending and hot metal presses, forging presses and hammers, riveting machines and similar fastener applicators have previously not been cited under any of the OSHA standards for point of operation guarding. They are specifically exempted under 29 CFR 1910.218(a)(5).~~

(b) ~~The United States OSHA Review Commission is of the opinion that this exempted equipment can be cited under the general standards found under 29 CFR 1910.212.~~

(c) ~~Point of operation guarding for the exempted equipment will be cited under 29 CFR 1910.212:~~

(1) ~~Exempted equipment listed under 29 CFR 1910.217 shall be guarded by one or more of the following methods:~~

- (A) ~~gate or movable barrier device;~~
- (B) ~~presence sensing point of operation device;~~
- (C) ~~pullout device;~~
- (D) ~~holdout or restraint device;~~
- (E) ~~two hand control device;~~
- (F) ~~point of operation guards;~~

(2) ~~Press Brakes. The guidelines set forth in ANSI B11.3 1973 will apply to powered machines constructed with a plate type ram or slide, and plate type bed, classified by the generic term "press brake." This machine is sometimes referred to as a "bending brake" or a "brake press." If a point of operation guard or device as listed under (c)(1) of this Rule cannot be used, protection for the operator shall be provided by either:~~

- (A) ~~maintaining a safe distance between the operator(s) and the point of operation, determined by the part being formed; A safe distance is defined by table 1 of ANSI B11.3 1973 reprinted here (This is the same as table 0-10 of 29 CFR 1910.217); or~~
- (B) ~~using hand tools to feed the part.~~

(3) ~~Hydraulic and pneumatic power presses, bulldozers, hot bending and hot metal presses, forging presses and hammers, riveting machines and similar fastener applicators must be guarded in accordance with (c)(1) of this Rule (and table 0-10 where applicable).~~

TABLE 1
ACCEPTED SAFE OPENINGS BETWEEN GUARD AND FEED TABLE

Distance of Opening from Point of Operation Hazard (inches)	Maximum Width of Opening (inches)
1/2 to 1 1/2	1/4
1 1/2 to 2 1/2	3/8
2 1/2 to 3 1/2	1/2
3 1/2 to 5 1/2	5/8
5 1/2 to 6 1/2	3/4
6 1/2 to 7 1/2	7/8

7-1/2 to 12-1/2	1-1/4
12-1/2 to 15-1/2	1-1/2
15-1/2 to 17-1/2	1-7/8
18-1/2 to 21-1/2	2-1/9

- (A) ~~Table 1 gives the distances from the danger line at which guards shall be positioned, in accordance with the required openings.~~
- (B) ~~The value at the upper limit in each range is to be excluded from that range.~~

Statutory Authority G.S. 95-13.

.1205 ACCEPTABLE GUARDING FOR CIRCULAR MEAT CUTTING SAWS

~~upon release of the operating control(s) is recommended.~~

(a) ~~Standard 29 CFR 1910.212(a)(3)(ii) states; the point of operation of machines where operation exposes an employee to injury, shall be guarded.~~

(b) ~~A circular meat cutting saw shall be guarded in one of the following ways:~~

(1) ~~A suspended counter balanced circular meat cutting saw that requires two handed operation shall be deemed adequately guarded, if provided with a guard that covers at least 25 degrees of the circumference of the blade and it conforms to the requirements in (4) of this Subsection.~~

(2) ~~A suspended counter balanced circular meat cutting saw that requires only one handed operation shall be deemed adequately guarded, if provided with a guard that covers at least 90 degrees of the circumference of the blade and it conforms to the requirements in (4) of this Subsection.~~

(3) ~~A nonsuspended circular meat saw, either one hand or two handed operation, shall be deemed adequately guarded if provided with a guard that covers at least 120 degrees of the circumference of the blade and it conforms with the requirements in (4) of this Subsection.~~

(4) ~~All circular meat cutting saws shall conform to the following:~~

(A) ~~A "dead man" control(s) shall be required;~~

(B) ~~The guard protecting the operator from contact with the blade shall be located between the operator and the blade;~~

(C) ~~The maximum number of degrees of circumferential guarding of the blade shall be provided based on specific applications in meat cutting operations;~~

(D) ~~A brake that automatically activates~~

Statutory Authority G.S. 95-136(g).

.1206 GUARDING OF CENTRIFUGES

(a) ~~Standard 29 CFR 1910.212(a)(4) states: Revolving containers shall be guarded by an enclosure which is interlocked with the drive mechanism so that the container cannot revolve unless the guard enclosure is in place.~~

(b) ~~The purpose of this notice is to provide clarification of the intent and enforcement policy of this department in regard to application of 29 CFR 1910.212(a)(4) to centrifuges used in hospitals, medical schools, laboratories and industry.~~

~~Many questions have arisen regarding the interlocking devices on centrifuges. The RPMs of the rotating parts on centrifuges varies from approximately 1,000 to approximately 12,000. Most new equipment of this type is now being manufactured with interlocking safety devices installed, older models presently used in field are not equipped with interlocking safety devices and this may present significant hazards to employees. However, after careful review of the standards and discussion with federal officials it has been determined that 29 CFR 1910.212(a)(4) was not promulgated for the purpose of requiring interlocks on centrifuges. Further, the authors of the source standard from which 29 CFR 1910.212(a)(4) was taken did not intend that the source standard be applied to centrifuges.~~

~~(c) 29 CFR 1910.212(a)(4) shall not be applied to require employers to provide interlocks on centrifuges. Other requirements of the OSHA standards shall apply as appropriate.~~

Statutory Authority G.S. 95-136(g).

SECTION .1300 - HAND AND PORTABLE POWERED TOOLS AND OTHER HAND HELD EQUIPMENT

.1301 SCOPE

This Section 13 NCAC 7D .1300 contains all the currently effective interpretations of standards contained within Subpart P — Hand and Portable Powered Tools and Other Hand Held Equipment of Part 1910 of Title 29 of the Code of Federal Regulations.

Statutory Authority G.S. 95-136(g).

.1302 APPLICATION AND DISTRIBUTION

All rules filed within this Section are distributed to NC OSHA field personnel, supervisors and staff in the form of standards notices. The rules contained in this Section are official interpretations and represent enforcement policy regarding NC OSHA's application of safety and health rules and regulations.

Statutory Authority G.S. 95-136(g).

SECTION .1400 - WELDING; CUTTING AND SPRAYING

.1401 SCOPE

This Section 13 NCAC 7D .1400 contains all the currently effective interpretations of standards contained within Subpart Q — Welding, Cutting and Spraying of Part 1910 of Title 29 of the Code of Federal Regulations.

Statutory Authority G.S. 95-136(g).

.1402 APPLICATION AND DISTRIBUTION

All rules filed within this Section are distributed to NC OSHA field personnel, supervisors and staff in the form of standards notices. The rules contained in this Section are official interpretations and represent enforcement policy regarding NC OSHA's application of safety and health rules and regulations.

Statutory Authority G.S. 95-136(g).

.1403 WORK IN CONFINED SPACES FOR WELDING

(a) Standard 29 CFR 1910.252(e)(4)(iv) requires that where a welder must enter a confined space through a manhole or other small opening, means shall be provided for quickly removing him in case of emergency. When safety belts and life lines are used for this purpose, they shall be so attached to the welder's body that his body cannot be jammed in a small exit opening. An attendant with a

preplanned rescue procedure shall be stationed outside to observe the welder at all times and be capable of putting rescue operations into effect.

(b) Standard 29 CFR 1910.252(e)(4) concerns the protection of welders performing welding operations inside tanks, vessels and other such confined spaces. The principal hazards that this standard protects against are:

- (1) — oxygen deficiency;
- (2) — airborne toxic materials;
- (3) — blocked emergency egress.

(c) During the final stages of vessel fabrication, such as fabrication of boilers, welders may be required to work in confined spaces. Although the vessel being fabricated meets the specifications for a confined space, the degree of hazard to welders is much less for new than for used vessels. The following procedure may be utilized in lieu of an attendant for new vessel manufacture only, provided each step is followed without exception:

- (1) — The confined space being entered must be a new vessel being fabricated without any piping connections that could inadvertently introduce liquids, gases or solid materials into the vessel.
- (2) — Proper breathing air will be maintained in the confined space by air supply and/or exhaust systems that insure an oxygen level of 20 percent or greater and maintains all toxic fumes below the specified threshold limit values (29 CFR 191093). The breathing air systems must be electrically interlocked with an emergency alarm system to provide an audio visual alarm upon failure to the air flow or dual system provided with separate power sources.
- (3) — A confined space entry permit system and documented procedure will be prepared and utilized by the employer to insure effective welder protection. The procedure will include a system of direct verbal and visual communications each hour between supervisors and welders working in confined spaces. The supervisor of the exposed welders will authorize the entry permit. Emergency rescue procedures will be included and welders effectively trained.
- (4) — All welders working in confined spaces without an attendant will be provided with an emergency alarm, such as a compressed gas horn or similar device, so they can signal personnel working

outside nearby (within audible range of the alarm) for assistance. The entry permit must specify the names of personnel required to remain within the adjacent area to render assistance upon an alarm.

- (5) Effective egress must be provided for welders in confined spaces. They must be able to exit the confined space without assistance from the outside.
- (6) No flammable gases or liquids will be allowed inside the confined space under this procedure unless a stand by attendant is provided.
- (7) The supervisor signing the vessel entry permit is responsible to insure that all entry requirements are met and for verifying safe egress of welders.
- (8) Step down electrical transformers will be utilized for all internal lighting systems to insure welders are protected against electrical shock.

Statutory Authority G.S. 95-136(g).

SECTION .1500 - SPECIAL INDUSTRIES

.1501 SCOPE

This Section 13 NCAC 7D .1500 contains all the currently effective interpretations of standards contained within Subpart R - Special Industries of Part 1910 of Title 29 of the Code of Federal Regulations.

Statutory Authority G.S. 95-136(g).

.1502 APPLICATION AND DISTRIBUTION

All rules filed within this Section are distributed to NC OSHA field personnel, supervisors and staff in the form of standards notices. The rules contained in this Section are official interpretations and represent enforcement policy regarding NC OSHA's application of safety and health rules and regulations.

Statutory Authority G.S. 95-136(g).

.1503 TEXTILE GEAR HOUSING COVERS

(a) Standard 29 CFR 1910.262(j) applies to drawing frames, slubbers, roving parts, cotton combers, ring spinning frames, and twistors. Gear housing covers on all installations of drawing frames, slubbers, roving frames, cotton combers, ring spinning frames, and twistors shall be equipped with interlocks.

(b) An alternative measure may be employed and construed as meeting the standard in lieu of the requirement for interlocks on the gear housing covers on the machinery mentioned in (a) of this Rule. This alternative measure consists of the following two conditions:

- (1) The establishment must have a program or prescribed method and which is the establishment's written policy, requiring lockouts to be installed before performing maintenance, making repairs, adjustments, or in any way working on or with gear housing and associated power transmission apparatus;
- (2) Must have further installed limit switches on the apparatus, or bolt the door closed such that a wrench is required to open the door.

(c) When the two conditions in (b) of this Rule are met, then this method will be accepted in lieu of the requirements for interlocks on the gear housing covers. It must be ascertained that the systems providing for the use of lockouts and having limit switches is in effect before this can be substituted for the interlock. If neither system is in effect, the employer will be informed of the standard requiring interlocks on the gear housing covers, and informed of the alternative measure, but will be cited for having no interlocks on the gear housing covers. If the firm installs wire mesh or other metal guards in accordance with table O-12 of 29 CFR 1910 such that grease guns can pass through the guards to the fittings, and employee exposure is eliminated then the firm will not be cited for performing this function without locking out the machine, provided that the guard itself remains in place, secured with either bolts or limit switches.

Statutory Authority G.S. 95-136(g).

.1504 LAUNDRY POINT OF OPERATION GUARDS

(a) Standard 29 CFR 1910.264(b) applies to moving parts of equipment used in laundries and to conditions peculiar to this industry, with special reference to the point of operation of laundry machines. This standard does not apply to dry cleaning operations.

(b) Subsection (a) of this Rule exempts dry cleaning operations from standard 29 CFR 1910.264; however, since the purpose of the standard, as stated in (a) of this Rule, is to provide point of operation guarding for laundry machinery

and since the laundry and dry-cleaning machinery are similar, we will follow the policy outlined in (e) of this Rule to cover point of operation guarding on dry-cleaning operations.

(e) Standard 29 CFR 1910.212(a)(1) or 29 CFR 1910.212(a)(2) of the United States Federal Register will be the standards used to cite for point of operation guarding on dry-cleaning machinery.

Statutory Authority G.S. 95-136(g).

.1505 DRYING TUMBLERS-SHAKERS- WASHING MACHINE INTERLOCK DEVICES

(a) Standard 1910.262(ee)(1) states: "Each drying tumbler, each double cylinder shaker or clothes tumbler, and each washing machine shall be equipped with an interlock device which will prevent the power operation of the inside cylinder when the outer door on the case or shell is open, and which will also prevent the outer door on the case or shell from being opened without shutting off the power. This should not prevent the movement of the inner cylinder by means of a hand operated mechanism or an "inching device." 29 CFR 1910.264(e)(1)(ii) states: "Each washing machine shall be equipped with an interlocking device that will prevent the inside cylinder from moving when the outer door on the case or shell is open, and will also prevent the door from being opened while the inside cylinder is in motion. This device should not prevent the movement of the inner cylinder under the action of a hand-operated mechanism or under the operation of an "inching device."

29 CFR 1910.264(e)(2)(iii)(a) states: "Each drying tumbler shall be equipped with an interlocking device that will prevent the inside cylinder from moving when the outer door on the case or shell is open, and also prevent the door from being opened while the inside cylinder is in motion. This device should not prevent the movement of the inner cylinder under the action of a hand-operated mechanism or under the operation of an "inching device."

29 CFR 1910.264(e)(2)(iv)(b)(1) states: "Each shaker or clothes tumbler of the double cylinder type shall be equipped with an interlocking device that will prevent the inside cylinder from moving when the outer door on the case or shell is open, and also prevent the door from being opened while the inside cylinder is in motion. This device should not prevent the movement of the inner cylinder under the action of a hand-operated mechanism or under the operation of an "inching

device."

(b) The standards listed under (a) of this Rule require interlocking devices on the door, outer case or shell of drying tumblers, shakers and washing machines. The use of a cut off switch which cuts off the power to the inside cylinder when the door on the outer shell is opened provides adequate protection in many cases.

(c) The use of a cut off switch operated by the opening of the door of the machine satisfies the intent of the standards stated under (a) of this Rule, provided that the inner cylinder of the machine does not continue to rotate after the door is open in such a manner as to present a hazard to employees. In those situations in which the cylinder does continue to rotate and thereby presents a hazard after the power is shut off, an interlock device, braking mechanism or a time delay switch would be required to protect employees from possible injury.

Statutory Authority G.S. 95-136(g).

.1506 CONSTRUCTION WORK AS RELATED TO TELECOMMUNICATION WORK

(a) The purpose of this notice is to clarify the intent of paragraphs 29 CFR 1910.268(a)(2)(i) and (3):

Paragraph 29 CFR 1910.268(a)(2)(i) states: "These standards do not apply to construction work as defined in 29 CFR 1910.12." Paragraph 29 CFR 1910.268(a)(3) states: "Operations or conditions not specifically covered by this section are subject to all the applicable standards contained in this Part 1910. See 29 CFR 1910.5(e). Operations which involve construction work, as defined in 29 CFR 1910.12 are subject to all the applicable standards contained in Part 1926 of this chapter." Requests for clarification have been received as to the intent of these statements on construction work as they relate to telecommunication work.

(b) The intent of these two paragraphs is to indicate that all construction activity performed by the telecommunication industry (and for that matter, any industry) would be governed by the rules and regulations of 29 CFR 1926. This means that operations presently subject to Part 1926 will continue to be subject to those standards and that 29 CFR 1910.268 (Telecommunications) standards do not alter this present system.

Statutory Authority G.S. 95-136(g).

.1507 GUARDING OF CARDING MACHINES USED IN THE TEXTILE INDUSTRY

(a) ~~29 CFR 1910.219(a)(3) states: For the textile industry, because of the presence of excessive deposits of lint, which constitutes a serious fire hazard, the sides and face sections only of nip point belt and pulley guards are required, provided the guard shall extend at least six inches beyond the rim of the pulley on the in-running and off-running sides of the belt and at least two inches away from the rim and face of the pulley in all other directions.~~

~~29 CFR 1910.219(e)(1)(i) states: Where both runs of horizontal belts are seven feet or less from the floor level, the guard shall extend to at least 15 inches above the belt or to a standard height (see table 0-12), except that where both runs of a horizontal belt are 42 inches or less from the floor, the belt shall be fully enclosed in accordance with paragraphs (m) and (o) of this section.~~

~~29 CFR 1910.219(f)(1) states: Gears shall be guarded in accordance with one of the following methods: By a complete enclosure; by a standard guard as described in paragraph (o) of this section, at least seven feet high extending six inches above the mesh point of the gears; or by a band guard covering the face of the gear and having flanges extended inward beyond the root of the teeth on the exposed side or sides. Where any portion of the train of gears guarded by a band guard is less than six feet from the floor a disk guard or a complete enclosure to the height of six feet shall be required.~~

~~29 CFR 1910.219(f)(3) sprockets and chains. All sprocket wheels and chains shall be enclosed unless they are more than seven feet above the floor or platform. Where the drive extends over other machine or working areas, protection against falling shall be provided. This Subparagraph does not apply to manually operated sprockets.~~

~~29 CFR 1910.219(e)(3) Machine Guarding. Mechanical power transmission equipment shall be guarded in conformity with 29 CFR 1910.219.~~

(b) Under 29 CFR 1910.219(e)(3) an exception is made for the guarding of textile machines because of the possible fire hazards which might exist if the machinery were guarded in accordance with other provisions set forth in references in (a) of this Rule. Additionally, the requirement of guarding textile machinery in accordance with sections 29 CFR 1910.219(e)(1)(i) and 29 CFR 1910.219(f)(1) and (3) is not applicable in many cases because of the spacing of machines and existing physical structures. It is recognized that

all mechanical action or motion requires safety precautions, but in varying degrees. Rotating parts, belts, chain and sprocket and gears require protection for those persons exposed. However, the selection of the method of guarding depends upon a number of factors, i.e., space limitation, production method, hazards created by the guards and frequency of employee exposure. Taking these factors into consideration, protection for employees must be accomplished by means which minimize the employee's exposure to the hazards.

(e) The protection for exposure against nip point motions, gears, and pulleys on the sides of cards for the textile industry is to be accomplished by all of the following:

- (1) A metal barrier between cards which would prevent employees from entering the danger zone or area; These barriers shall consist of fixed, gate or movable barriers. They shall be located at the front and back between the cards (which are adjacent to the employee's working alleys);
- (2) Those cards located along aisles and passageways shall be guarded in accordance with the provisions of section 29 CFR 1910.219, including barriers of expanded metal or other suitable material of adequate height;
- (3) The cards shall have a means for positively locking off the equipment and the employer shall have a written and enforced policy requiring the locking out or off of the power source or power transmission apparatus before any employee may enter the area between the cards;
- (4) Those employees that enter the danger zone or area shall be warned by appropriate signs that the cards to which he is exposed must have their power turned off and a lock out installed;
- (5) The sign shall be clearly legible to anyone about to enter the danger zone and shall contain information illustrated as follows:

Note:

DANGER

UNGUARDED EQUIPMENT

LOCK OUT AND TAG BEFORE ENTERING

This interpretation shall apply to textile cards only. Where an employee desires to lock out only one of a pair of cards to which an employee is exposed when working within the perimeter of the barriers

specified in (1) of this Subsection, the card which is left running may be guarded in the following manner. A moveable barrier which covers all power transmission apparatus or other hazardous parts to which an employee is exposed may be placed between the cards. This moveable guard must be of substantial construction, stable, and provide protection to employees at least as effective as that which would be provided by 29 CFR 1910.219.

Statutory Authority G.S. 95-136(g).

.1508 MECHANICAL POWER TRANSMISSION APPARATUS ON TEXTILE LOOMS

(a) Standard 29 CFR 1910.262(e)(3) states: Mechanical power transmission apparatus shall be guarded in conformity with 29 CFR 1910.219.

(b) The purpose of this notice is to provide clarification of the intent and enforcement policy of this department in regard to application of 29 CFR 1910.262(e)(3) to textile looms.

Many questions have arisen regarding power transmission apparatus guarding on looms and especially on dobby drives and jacquard arms. In many cases this apparatus presents a significant hazard to employees. Due to the variations in severity of hazard and employee exposure, it can be very difficult and often unfair to establish comprehensive and specific instructions as to which apparatus must be guarded and applying these in all situations.

The many different designs and configurations of equipment with the same name and/or function further complicate the use of comprehensive machine-guarding instructions to field personnel. Furthermore, these instructions often preclude the use of professional judgment by the inspector in analyzing hazardous conditions by mandating a specific requirement without consideration of each condition on its own merit.

(c) All power transmission apparatus on or associated with textile looms shall be guarded in accordance with 29 CFR 1910.262(e)(3) when the condition indicates that there is a violation of OSHA requirements. This shall apply to all power transmission apparatus on textile looms including dobby drives and jacquard arms.

Statutory Authority G.S. 95-136(g).

.1509 STANDBY PERSONNEL AT TELECOMMUNICATIONS MANHOLE

(a) 1910.268(o)(1)(ii) states: While work is being performed in a manhole, a person with basic first-aid training shall be immediately available to render assistance if there is cause for believing that a safety hazard exists and if the requirements contained in 1910.268(d)(1) and (o)(1)(i) do not adequately protect the employee(s). Examples of manhole worksite hazards which shall be considered to constitute a safety hazard include, but are not limited to:

- (1) Manhole worksites where safety hazards are created by traffic patterns that cannot be corrected by provisions of 1910.268(d)(1);
- (2) Manhole worksites that are subject to unusual water hazards that cannot be abated by conventional means;
- (3) Manhole worksites that are occupied jointly with power utilities as described in 1910.268(o)(3).

(b) 1910.268(d)(1) states: Before work is begun in the vicinity of vehicular or pedestrian traffic which may endanger employees, warning signs, and/or flags or other traffic control devices shall be placed conspicuously to alert and channel approaching traffic. Where further protection is needed, barriers shall be utilized. At night, warning lights shall be prominently displayed, and excavated areas shall be enclosed with protective barricades.

(c) 1910.268(o)(1)(i) states: When covers of manholes or vaults are removed, the opening shall be promptly guarded by a railing, temporary cover, other suitable temporary barrier which is appropriate to prevent an accidental fall through the opening and to protect employees working in the manhole from foreign objects entering the manhole.

(d) North Carolina OSHA's enforcement experience with 1910.268, Telecommunications, has shown that 1910.268(o)(1)(ii) should be clarified to enable the department to properly administer the standard and to provide employers and employees with adequate guidance in the requirements of these standards.

(e) The purpose of 1910.268(o)(1)(ii) is to insure the presence of a person trained in first aid to adequately reduce or eliminate the hazards to which employees entering, working in, or about to enter a manhole are exposed. An evaluation of the hazard to which employees are exposed must be conducted for each condition, location or activity which is to be performed in or around a telecommunications manhole.

(f) An analysis of 1910.268(o)(1)(ii) reveals

three primary issues for interpretation as follows:

- (1) ~~A person must be available to render such assistance if there is "cause for believing that a safety hazard exists."~~
- (2) ~~1910.268(o)(1)(ii) requires a person with basic first aid training to be immediately available to "render assistance."~~
- (3) ~~If the requirements of (d)(1) and (o)(1)(i) of 1910.268 adequately protect employees, a person with basic first aid training is not required to be immediately available.~~
- (g) ~~The following factors should be considered in determining if a person with basic first aid training must be immediately available to satisfy the requirements of 1910.268(o)(1)(ii):~~
 - (1) ~~Is there cause for believing that a safety hazard exists? In making this evaluation many factors must be considered. The degree of hazard will vary significantly based upon the conditions inside and outside the telecommunications manhole (manhole worksite), the type of work being performed inside and outside the telecommunications manhole, weather conditions, location of the manhole, and other factors. Potential hazards which may be confronted and must be evaluated to determine the need for a person with basic first aid training to be immediately available to render assistance include but are not limited to the following:~~
 - (A) ~~traffic (large quantity or dangerous traffic patterns);~~
 - (B) ~~energized electrical cables and equipment;~~
 - (C) ~~water (accumulated or flowing);~~
 - (D) ~~manhole configurations which may hinder egress;~~
 - (E) ~~poor walking and working surfaces;~~
 - (F) ~~combustible or toxic gases or chemicals;~~
 - (G) ~~oxygen deficiency;~~
 - (H) ~~vermin (snakes, spiders, etc.);~~
 - (I) ~~extreme heat or cold;~~
 - (J) ~~noise;~~
 - (K) ~~hazardous mechanical equipment; and~~
 - (L) ~~material handling problems.~~
 - (2) ~~Is there a need for a person with basic first aid training to be immediately available to render assistance?~~
 - (A) ~~After the hazards associated with a~~

particular telecommunications manhole worksite have been assessed, a determination must be made of the need for a person with basic first aid training to render assistance.

- (B) ~~A determination must also be made that there is a reasonable probability that the presence of a person with basic first aid training will protect employees from the hazards to which they are exposed. In making these determinations, the following questions must be answered:~~
 - (i) ~~What assistance may the additional person be required to render?~~
 - (ii) ~~Is the additional person properly trained, equipped, located or otherwise prepared to render the appropriate assistance?~~

Note: ~~If the hazards can be eliminated through practices, means, methods or techniques other than making a person with basic first aid training immediately available, such practices, means, methods, and techniques should be utilized and can be accepted in lieu of providing a person with basic first aid training. The purpose of 1910.268 (o)(1)(ii) is to provide an acceptable level of safety. The use of innovative techniques to accomplish this objective is encouraged.~~

- (C) ~~The phrase "immediately available to render assistance" should be applied in consideration of the hazards encountered at a manhole worksite. Some circumstances may dictate that visual contact be maintained or safety lines be constantly attended. In other circumstances voice communications or a periodic assurance that no problems have arisen may be adequate.~~
- (3) ~~Do the requirements of 1910.268(d)(1) and 1910.268 (o)(1)(i) adequately protect employees?~~
 - (A) ~~Compliance with 1910.268(d)(1) and 1910.268 (o)(1)(i) will be accepted in lieu of a person with basic first aid training being made immediately available to render assistance.~~
 - (B) ~~1910.268(d)(1) and (o)(1)(i) address only the hazards of vehicular or pedestrian traffic or foreign objects entering the manhole. If other~~

hazards exist at the manhole worksite. 1910.268 (d)(1) and (o)(1)(i) may not adequately protect employees. Examples of other hazards are listed under 1910.268(o)(1)(ii). They include water hazards and manhole worksites occupied jointly with power utilities. There are many other hazards which are covered by the standards and some of them are listed under Paragraph (g) of this Rule.

- (C) Some hazards to which employees working in manholes may be exposed are addressed by other standards such as 1910.268(o)(2). 1910.268(o)(2) requires that appropriate tests be performed of the atmosphere in the manhole and that proper ventilation be provided to insure the quality of the air within the manhole is acceptable. Under no circumstances is the employer exempt from meeting the requirements of 1910.268(o)(2), but compliance with the requirements of 1910.268(o)(2) may (in absence of other hazards) eliminate the need for compliance with 1910.268(o)(1)(ii). An evaluation of a manhole worksite must always consider the factors addressed in 1910.268(o)(2).

(h) Violations of 1910.268(o)(1)(ii) exist when the immediate availability of an additional person trained in basic first aid can be reasonably expected to safeguard employees from manhole worksite hazards and the employer has not utilized alternative measures which adequately safeguard employees.

(i) Citations of 1910.268(o)(1)(ii) shall not be issued without a thorough assessment of the hazards to which employees are exposed.

(j) Citations for lack of appropriate personal protective equipment, rescue equipment and employee training, etc., shall be issued when an additional employee is available [as required by 1910.268(o)(1)(ii)] but is improperly trained or equipped to provide the adequate safeguards.

Statutory Authority G.S. 95-133(b)(1); 95-133(b)(2); 95-133(b)(3); 95-136(g).

SECTION .1600 - ELECTRICAL

.1601 SCOPE

This Section 13 NCAC 7D .1600 contains all the currently effective interpretations of standards

contained within Subpart S—Electrical of Part 1910 of Title 29 of the Code of Federal Regulations.

Statutory Authority G.S. 95-136(g).

.1602 APPLICATION AND DISTRIBUTION

All rules filed within this Section are distributed to NC OSHA field personnel, supervisors and staff in the form of standards notices. The rules contained in this Section are official interpretations and represent enforcement policy regarding NC OSHA's application of safety and health rules and regulations.

Statutory Authority G.S. 95-136(g).

.1603 COMMERCIAL GARAGES: REPAIR AND STORAGE

(a) Standards 29 C.F.R. 1910.307 and 1910.339 from National Electrical Code, Article 511 concern commercial garages, repair and storage.

(b) This Rule previously required that explosimeter measurements be made to prove existence of Class I Division 1 (classified) location in unventilated pits or depressions below grade in commercial garages. Since the issuance of this Rule, some changes have been made to National Electrical Code Article 511. This revision updates and clarifies North Carolina Occupational Safety and Health Division's enforcement policy regarding electrically classified hazardous areas in garages and removes the requirement for explosimeter measurements previously set forth in this Rule.

(c) The 1971 National Electrical Code at 511.2(e) states any pit or depression below floor level shall be considered to be a Class I Division 2 location which shall extend up to said floor level, except that any unventilated pit or depression may be judged by the authority having jurisdiction to be a Class I Division 1 location.

(d) The 1975 National Electrical Code at 511.2(b) states any pit or depression below floor level shall be considered to be a Class I Division 1 location which shall extend up to said floor level, except that any pit or depression in which six air changes per hour are exhausted at the floor level of the pit shall be permitted to be judged by the enforcing agency to be a Class I Division 2 location.

(e) The 1981 National Electrical Code at 511.2(b) is identical to the 1975 National Electrical Code.

(f) 1910.307 Hazardous (classified) locations:

This Section covers the requirements for electric equipment and wiring in locations which are classified depending on the properties of the flammable vapors, liquids or gases, or combustible dusts or fibers which may be present therein and the likelihood that a flammable or combustible concentration or quantity is present. Each room, section or area shall be considered individually in determining its classification. For definitions of these locations see 1910.399(a).

(g) Originally, this Rule was written to avoid the inconsistency of interpretations which resulted from the wording of the 1971 Code requirements. The 1971 National Electrical Code allowed the authority having jurisdiction the flexibility to classify a pit or depression as Class I Division 1; the 1975 National Electrical Code took a different approach. The 1975 National Electrical Code classified the pits as Class I Division 1 and allowed the authority having jurisdiction the option of Class I Division 2 if six air changes per hour exhausted at floor level were provided.

(h) The OSHA electrical standards do not specifically address pits and depressions in commercial garages. However, under 1910.399(a)(24), the standards define Class I Division 1 and 2 locations. The definitions allow the use of ventilation systems to prevent hazardous atmospheres from accumulating. This can permit classifying a pit or depression Class I Division 2 instead of Class I Division 1. The OSHA standards are consistent with the 1975 and 1981 versions of the National Electrical Code. Where equipment unacceptable for the appropriate Class I location is installed or used in a garage pit or depression, it should be cited under 1910.307.

(i) In the future, we will follow the guidance provided in the 1975 National Electrical Code, 1981 National Electrical Code, and the OSHA standards. Explosimeter readings are not required in pits and depressions to prove the need for Class I Division 1 equipment. This approach (not requiring explosimeter readings to prove the need for Class I Division 1 equipment) is consistent with other provisions of the National Electrical Code and OSHA standards such as the requirements for Class I Division 1 equipment in spray finishing areas.

(j) Contrary to the guidance previously set forth in this Rule, OSHA personnel should not depend solely on the absence of motor repairs to indicate an area is not classified. Areas of automotive repair and service facilities where major repair or body and fender work is performed are classified (adjacent areas may be classified) and must be

evaluated pursuant to the applicable standards. Normally, parking garages used for parking or storage where no repair work is done except exchange of parts and routine maintenance requiring no use of electrical equipment, open flame, welding or the use of volatile flammable liquids are not classified. NFPA 88A provides construction and protection requirements for parking garages.

Statutory Authority G.S. 95-136(g).

.1604 GROUNDING OF CORD-AND-PLUG CONNECTED ELECTRICAL EQUIPMENT

(a) The purpose of this notice is to clarify the requirements for grounding cord and plug connected electrical equipment. Many questions have arisen regarding the requirements for grounding portable fans, bench grinders, sewing machines, etc. Article 250.45 of the National Electrical Code provides the requirements for grounding cord and plug connected equipment. Most office type equipment, portable fans, bench grinders, and some sewing machines not supplied from overhead busways and similar equipment are cord and plug connected.

(b) NC OSHA's enforcement policy regarding grounding of cord and plug connected equipment shall be in accordance with the National Electrical Code. Office type equipment, bench grinders, portable fans, sewing machines and similar equipment need not be grounded unless located in hazardous locations, operating at over 150 volts to ground or in wet or conductive locations. Equipment specifically mentioned in the article will be cited as required in the past. Please refer to the text of National Electrical Code, Article 250.45 for further information.

Statutory Authority G.S. 95-136(g).

SECTION .1700 - DIVING OPERATIONS

.1701 SCOPE

This Section 13 NCAC 7D .1700 contains all the currently effective interpretations of standards contained within Subpart T Diving Operations of Part 1910 of Title 29 of the Code of Federal Regulations.

Statutory Authority G.S. 95-136(g).

.1702 APPLICATION AND DISTRIBUTION

All rules filed within this Section are distributed

to NC OSHA field personnel, supervisors and staff in the form of standards notices. The rules contained in this Section are official interpretations and represent enforcement policy regarding NC OSHA's application of safety and health rules and regulations.

Statutory Authority G.S. 95-136(g).

SECTION .1800 - NONFEDERAL STANDARDS AND STANDARDS TERMINOLOGY

.1801 SCOPE

This Section 13 NCAC 7D .1800 contains all the currently effective interpretations of nonfederal standards and standards terminology not covered in Sections 7D .0100 to 7D .1700.

Statutory Authority G.S. 95-136(g).

.1802 APPLICATION AND DISTRIBUTION

All rules filed within this Section are distributed to NC OSHA field personnel, supervisors and staff in the form of standards notices. The rules contained in this Section are official interpretations and represent enforcement policy regarding NC OSHA's application of safety and health rules and regulations.

Statutory Authority G.S. 95-136(g).

.1803 GENERAL DEFINITION OF CONFINED SPACE

(a) This standards notice expounds upon the term confined space as it appears in various standards.

(b) Various inquiries have been made concerning the appropriate scope of the term confined space. The Encyclopedia of Occupational Health and Safety states that the term confined space, as it refers to industrial activity, generally describes a space having a relatively small volume with unfavorable natural ventilation and one into which frequent or irregular entry is made... (It is a) space as enclosed that dangerous air contamination therein cannot be prevented or removed by natural ventilation through openings in the enclosure. Examples of such spaces include silos, tanks, vats, reaction vessels, boilers, sewers, compartments of ships and degreasers. The definition cited (also includes) any space not having the inherent safety features of an ordinary workroom. Thus, in addition to the absence of means of natural ventilation, a confined space may

be considered as one wherein:

- (1) The volume is so small that uniform diffusion of evolving gases or vapors throughout the entire space would not always prevent the formation of a toxic concentration to the worker's breathing zone.
- (2) There would not be other workers in a nearby vicinity who could observe and rescue a worker suddenly overcome.
- (3) The openings are so remote or small that ready access or egress for removal of an overcome worker is difficult.

(c) The definition described in (b) of this Rule will be used whenever there is reference to the term confined space in the occupational safety and health administration standards.

Statutory Authority G.S. 95-136(g).

.1804 MOTOR-VEHICLE FATALITIES AND OSHA INJURY-ILLNESS RECORDS

(a) Section 13 NCAC 7B .0300 contains OSHA requirements for recording and reporting occupational injuries and illnesses.

(b) Recording of injuries resulting from motor vehicle operations under the jurisdiction of the Department of Transportation apparently continues to cause confusion. Confusion seems to arise because of a decision of the Occupational Safety and Health Review Commission that an employee death need not be reported to the OSHA Director if the employer is required to report the case to another agency [Secretary vs. Ruan Transportation Corporation, 3 OSHRC 364 (1973)]. The decision of the review commission, however, applies only to the report that must be made within 48 hours of an accident which results in a death or the hospitalization of five or more employees. Regulated carriers are required to record all injuries and illnesses which meet the criteria for recordability in their OSHA records, including deaths or injuries which occur in accidents which must be reported to the Department of Transportation.

(c) An example of a situation covered by the OSHRC ruling is:

- (1) ABC Transportation Company is a regulated interstate motor carrier. One of their truck drivers is involved in a highway accident and is killed instantly. The Department of Transportation requires that an immediate report be made of the death. ABC does not also have to make a report to the OSHA

Director.

- (2) ~~However, assuming ABC is not a small employer (currently defined as an employer with no more than 10 employees), the company would have to record the fatality in its log of occupational injuries and illnesses (OSHA No. 102). If ABC is a small employer but has been prenotified that it has been selected to participate in the annual survey of occupational injuries and illnesses, ABC would have to record the fatality in the log (OSHA No. 100) which it maintains, but would not have to prepare a supplementary record or annual summary.~~
- (3) ~~Regardless of ABC's size, the fatality would be included in the annual survey form (OSHA No. 103) if ABC is selected for the survey.~~

(d) ~~All work-related injuries which meet the criteria for recording must be included in the OSHA records maintained by employers including regulated carriers. The criteria for recording injuries include death, medical treatment other than first aid, loss of consciousness, restriction of work or motion, or transfer to another job. North Carolina OSHA will not cite for reporting fatalities within 48 hours when the fatalities are not under North Carolina OSHA jurisdiction.~~

Statutory Authority G.S. 95-131.

.1805 EMERGENCY EYE WASH AND SHOWER REQUIREMENTS

(a) ~~Standard 29 CFR 1910.151(e) states: Where the eyes or body of any person may be exposed to injurious corrosive materials, suitable facilities for quick drenching or flushing of the eyes and body shall be provided within the work area for immediate emergency use.~~

~~29 CFR 1910.94(d)(9)(vii) states: Near each tank containing a liquid which may burn, irritate or otherwise be harmful to the skin if splashed upon the worker's body, there shall be a supply of clean, cold water. The water pipe (carrying a pressure not exceeding 25 pounds) shall be provided with a quick opening valve and at least 48 inches of hose not smaller than three fourths inch, so that no time may be lost in washing off liquids from the skin or clothing. Alternatively, deluge showers and eye flushes shall be provided in cases where harmful chemicals may be splashed on parts of the body.~~

~~29 CFR 1910.261(g)(18)(i) states: Quick operating showers, bubblers, etc., shall be available for emergency use in case of caustic soda burns.~~

~~29 CFR 1910.262(pp) states: Wherever acids or caustics are used, provision shall be made for a copious and flowing supply of fresh, clean water.~~

~~29 CFR 1910.268(b)(2) states: . . . Facilities for quick drenching or flushing of the eyes and body shall be provided unless the storage batteries are of the enclosed type and equipped with explosion proof vents, in which case sealed water rinse or neutralizing packs may be substituted for the quick drenching or flushing facilities. . . .~~

~~29 CFR 1910.111(b)(10)(iii) states: Stationary storage installations shall have an easily accessible shower or a 50 gallon drum of water.~~

~~29 CFR 1910.111(b)(10)(iv) states: Each vehicle transporting ammonia in bulk except farm applicator vehicles shall carry a container of at least five gallons of water. . . .~~

29 CFR 1926.403(a)(6) states: ~~Facilities for quick drenching of the eyes and body shall be provided within 25 feet of the work area for emergency use.~~

(b) ~~The purpose of this Rule is to define minimally acceptable facilities and their accessibility for compliance with the requirements of the OSHA standards listed under (a) of this Rule. OSHA standards generally lack specificity as to the criteria emergency eye wash or shower facilities must meet to be effective. This Rule specifies minimally effective requirements for emergency eye wash and shower facilities. Examples of the terms and phrases which this Rule addresses are:~~

- ~~1910.151(e) "suitable facilities"~~
- ~~1910.94(d)(9)(vii) "supply of clean cold water . . . with a quick opening valve"~~
- ~~1910.261(g)(18)(i) "quick operating showers, bubblers, etc., shall be available"~~
- ~~1910.268(b)(2) "facilities for quick drenching or flushing of the eyes and body shall be provided"~~
- ~~1910.111(b)(10)(iii) "easily accessible shower . . ."~~
- ~~1926.403(a)(6) "facilities . . . shall be provided"~~

(c) ~~The criteria set forth in this Rule shall be accepted for compliance with any of the standards listed herein requiring quick flush or deluge systems (referred to in this Rule as emergency eye wash and shower facilities) for employee protection from injurious materials. This criteria is the minimum acceptable for compliance except where other specific provisions are mentioned as acceptable in an OSHA standard. This Rule is to be used as a definitive guide for general statements found in the OSHA standards. This Rule does not in any way alter the requirements of the standards where they are specifically set forth, such as the requirements for 50-gallon or 5-gallon containers of water under 1910.111(b)(10). When a standard is less stringent than the guidelines set forth in this Rule and an employer is engaged in activities to which the standard applies (i.e., 1910.111 Storage and Handling of Anhydrous Ammonia); if the employer's precautions meet only the requirements of the applicable standard, then no violation exists.~~

(d) ~~Interpretation:~~

(1) ~~Apparatus. The following criteria shall apply to facilities or apparatus installed for compliance with the standards listed herein:~~

(A) ~~Facilities must be provided and designated for the purpose of serving as emergency eye wash or shower facilities. These facilities must not be used for any other purpose which might inhibit their immediate use as emergency eye wash or shower facilities. Apparatus such as hoses, buckets, spigots, etc., which are used in conjunction with other activities or processes may serve as emergency eye wash or shower facilities only if they meet the applicable OSHA standard or the requirements of this Rule. Also, the use in conjunction with other activities must not diminish their accessibility or effectiveness as an emergency eye wash or shower.~~

(B) ~~Facilities for emergency eye wash and showers must be provided where the hazard warrants. They shall be installed so that they may both be used simultaneously by one person.~~

(C) ~~Emergency Eye Wash. Eye wash minimum physical requirements are met by use of any of the following:~~

- ~~(i) fixed commercially available apparatus designed specifically for eye wash, or an apparatus of similar design and equal effectiveness constructed by the employer;~~
- ~~(ii) a hose of adequate length and flexibility to allow the user to direct a flow of water into the eyes. A pressure reducing, divergent flow or "spent stream nozzle and quick opening valve" (providing full on/full off control with one hand operation) located at the nozzle must be attached to the hose.~~

~~Note: It is recommended that the nozzle be mounted at a height between 33 and 45 inches (so that both hands can be free to assist in irrigation of the eyes).~~

(D) ~~Emergency Shower. Minimum requirements are met by use of any of the following:~~

- ~~(i) fixed commercially available apparatus designed specifically as an emergency shower, or an apparatus of similar design and equal effectiveness constructed by the employer;~~
- ~~(ii) overhead mounted nozzle which provides a deluge or other soft flow of water equipped with a quick opening valve (providing full on/full off control in less than 180 degree arc) which can be operated by a person standing within the effective area of the shower.~~

(E) ~~Location. All required emergency eye wash and shower facilities must be located within a distance from the point of hazardous exposure which can be negotiated in 15 seconds or less, but in no case more than 75 feet. Factors which must be considered are physical layout of work area~~

and decreased vision and mobility which may result from employee exposures of varying severity.

- (F) ~~Water Supply/Flow Rates.~~ All facilities utilized for compliance with these standards must provide a copious flow of potable water for at least 15 minutes. No action other than the opening of a valve may be required by the user. (Examples of prohibited devices are squeeze bottles or manually operated pumps.)
- (G) ~~Personal eye wash equipment~~ deviating from the criteria set forth herein (squeeze bottles, neutralizing solutions, etc.) may not be substituted for the requirements set forth in this Rule. However, such facilities may, at the discretion of the employer, be provided in addition to the minimum requirements of the OSHA standards.
- (H) ~~Verification of Operation.~~ The employer shall ensure the dependability of all emergency eye wash and shower facilities through protection from freezing, deterioration, physical damage, and through appropriate inspection and maintenance. The SO or IH should ensure that the operability of all facilities is verified. Actual operation of facilities for this purpose should be by the employer or his representative.
- (I) ~~Temperature.~~ The temperature of the water used for emergency eye wash or shower facilities must be maintained above freezing and less than 112 degrees F. The water should be maintained at a comfortable temperature so as not to discourage its use (60 degrees F. - 95 degrees F.).
- (2) ~~Guidelines for Enforcement.~~
 - (A) ~~To evaluate the potential for employee exposure to eye, face or bodily contact with hazardous chemicals, the following factors must be considered:~~
 - (i) ~~employee use of personal protective equipment;~~
 - (ii) ~~type and concentration of chemicals;~~
 - (iii) ~~special guards and/or precautions intended to provide employee protection from chemical exposure; and~~
 - (iv) ~~based upon employee job functions, the extent and type of probable exposure.~~
 - (B) ~~Where potential employee exposure to hazardous chemicals exists, the circumstances and extent of exposure shall determine the application of the following alternatives:~~
 - (i) ~~The use of effective personal protective equipment in combination with an emergency eye wash and shower properly located shall be deemed to provide adequate minimum protection for employees. See requirements for location under (d)(1)(E) of this Rule.~~
 - (ii) ~~In addition to emergency eye wash and shower facilities, the employer shall ensure that adequate provisions have been established for additional emergency care of employees exposed to eye or face contact with hazardous chemicals.~~
 - (C) ~~Where employee exposure to hazardous chemicals exists and minimum protection measures are not provided, citations may also be issued for violations of the following standards in addition to those listed under Paragraph (a) of this Rule:~~
 - (i) ~~29 CFR 1910.151(b) or 29 CFR 1926.50(c), a person or persons adequately trained to render first aid shall be readily available in the absence of an infirmary, clinic or hospital in near proximity to the workplace which is used for the treatment of all injured employees.~~
 - (ii) ~~29 CFR 1910.132(a) or 29 CFR 1926.28(a), personal protective equipment for eyes, face, head, and extremities, protective clothing and protective shields and barriers, shall be provided, used and maintained in a sanitary and reliable condition wherever it is necessary by reason of chemical hazards encountered in a manner capable of causing injury or impairment in the function of any part of the body through absorption, inhalation or physical contact.~~
 - (D) ~~Where battery powered industrial trucks are used, the following guidelines shall apply:~~
 - (i) ~~At construction sites and in commercial and manufacturing facilities, at locations where powered industrial trucks are parked for overnight storage and routine battery recharging only, no need for emergency facilities exists unless potential exposure to electrolyte is substantiated. Where exposure is possible (i.e., servicing batteries) the provisions of (d)(2)(B) of this Rule should be evaluated for applicability.~~
 - (ii) ~~At construction sites and in commercial and manufacturing facilities where batteries (such as industrial truck batteries) are serviced and handled, proper eye wash and body drenching equipment shall be available regardless of the personal protective equipment required or used.~~
- (e) ~~Conclusion.~~ This Rule is intended to provide adequate uniform interpretation and application of OSHA

standards. It does not, however, alter any specific requirements of the currently effective OSHA standards. The provision of adequate emergency eye wash and shower facilities in no way affects the need for personal protective devices or other necessary protective measures. Refer to Rule 13 NCAC 7D .0605 for additional information regarding injurious materials and eye protection.

Statutory Authority G.S. 95-136(g).

SECTION .1900 - INSPECTION AND ENFORCEMENT AUTHORITY

.1901 SCOPE

This Section 13 NCAC 7D .1900 contains all the currently effective interpretations of inspection and enforcement authority not covered in Sections .0100 to .1800 of this Subchapter.

Statutory Authority G.S. 95-136(g).

.1902 APPLICATION AND DISTRIBUTION

All rules filed within this Section are distributed to NC OSHA field personnel, supervisors and staff in the form of standards notices. The rules contained in this Section are official interpretations and represent enforcement policy regarding NC OSHA's application of safety and health rules and regulations.

Statutory Authority G.S. 95-136(g).

.1903 OSHA/MESA JURISDICTION

(a) Standard 29 CFR 1910.5(b) states "None of the standards in 29 CFR 1910 shall apply to working conditions of employees with respect to which Federal agencies other than the Department of Labor, or State agencies acting under section 274 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2021), exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety and health."

(b) The purpose of this notice is to clarify the authority of OSHANC and MESA regarding areas of inspection authority. The Federal Metal and Nonmetallic Mine Safety Act (the Metal Act) authorizes the Secretary of the Interior to promulgate and enforce safety and health standards regarding working conditions of employees engaged in underground and surface mineral extraction (mining) and preparation and milling of the minerals extracted. The Occupational Safety and Health Act of North Carolina (OSHANC) covers all working conditions of employees in North Carolina except those conditions over which other federal agencies exercise statutory authority to prescribe or enforce regulations affecting occupational safety and health.

(c) Notwithstanding the clarification of authority provided by this Rule, there will remain areas of uncertainty regarding the statutory authority of each agency, especially in operations near the termination of the milling cycle and the beginning of the manufacturing cycle. Where it is uncertain whether a working condition is within the milling process or beyond, MESA will determine where milling ends, thereby providing the North Carolina Commissioner of Labor with a definition of the beginning of its worker coverage. The determination of this boundary line by MESA shall not restrict nor shall it be obligatory on the North Carolina Commissioner of Labor. If it is still unclear after these references, whether enforcement authority over working conditions resides with MESA or OSHANC, the Office of the Associate Solicitor for Mine Health and Safety, Department of the Interior, should meet with the North Carolina Commissioner of Labor or his representative and jointly resolve the issue.

(d) MESA has enforcement authority for employees' safety and health in mines and mills. When OSHANC receives information suggesting unsafe or unhealthful working conditions in an area for which MESA has authority for employee safety and health, OSHANC will forward that information to MESA for appropriate disposition. OSHANC has safety and health enforcement authority in processes beyond mines and mills. When MESA receives information suggesting unsafe or unhealthful working conditions in an area for which OSHANC has authority for employee safety and health, MESA should forward that information to OSHANC for appropriate disposition.

(e) Section 2(b) of the Metal Act defines "mines" covered by the act to include not only mineral extraction (mining) operations, but also milling and preparation facilities and other surface facilities used in mining or milling. Processes beyond milling are under the full employee safety and health authority of OSHANC.

(f) Mining has been defined as the science, technique, and business of mineral discovery and exploitation. It entails such work as directed to the severance of minerals from the natural deposits by methods of underground excavations, opencast

work, quarrying, hydraulic mining and alluvial dredging. Milling is the art of treating the crude crust of the earth to produce therefrom the primary consumer derivatives. The essential operation in all such processes is separation of one or more valuable desired constituents of the crude from the undesired contaminants with which it is associated. A crude is any mixture of minerals in the form in which it occurs in the earth's crust. An ore is a solid crude containing valuable constituents in such amounts as to constitute a promise of possible profit in extraction, treatment, and sale. The valuable constituents of an ore are ordinarily called valuable minerals, or often just minerals; the associated worthless mineral is called gangue.

(g) The following is a list indicating mining operations and minerals for which MESA has authority to regulate: underground mining, open pit mining, quarrying, solution mining (precipitate and leaching):

- (1) Dredging. Hydraulic mining, wells, ponds — brine evaporation, auger mining;
- (2) Minerals. Coal;
- (3) Metals (Included But Not Limited To): Antimony, bauxite, beryl, bismuth, chrome, cobalt, copper, gold, iron, lead, manganese, mercury, molybdenum, nickel, rare earths, silver, titanium, tungsten, uranium, vanadium, zinc, zirconium;
- (4) Nonmetals. Abrasives, aplite, asbestos, barite, boron, bromine, calcium chloride, clay, mica, mineral pigments, oil shale, peat, perlite, potash, pumice, potash rock, diatomite, feldspar, fluor spar, gilsonite, graphite, gypsum, kyanite, magnesite, salt, shale, sodium compounds, sulfur, talc, soapstone, pyrophyllite, vermiculite, wollastonite;
- (5) Subgroups (Nonmetals) (Sand and Gravel, and Crushed and Dimension Stone Industries). Sand, gravel, cement, gabbro, gneiss, lime, limestone, marble, native asphalt (impregnated stone and sand), quartzite, schist, slate, taprock, or diabase.

(h) Following is a list with general definitions of milling processes for which MESA has authority to regulate:

- (1) Crushing is the process used to reduce the size of mined material into smaller, relatively coarse particles. Crushing may be done in one or more stages, usually preparatory for the sequential stage of grinding, when concentration

of ore is involved.

- (2) Grinding is the process of reducing the size of a mined product into relatively fine particles.
- (3) Pulverizing is the process whereby mined products are reduced to fine particles, such as to dust or powder size.
- (4) Sizing is the process of separating particles of mixed sizes into groups of particles all of the same size, or into groups in which particles range between maximum and minimum sizes.
- (5) Concentrating is the process of separating and accumulating economic minerals from gangue, or the upgrading of ore or minerals.
- (6) Washing is the process of cleaning mineral products by the buoyant action of flowing water.
- (7) Drying is the process of removing uncombined water from mineral products, ores, or concentrates, for example, by the application of heat, in airactuated vacuum type filters, or by pressure type equipment.
- (8) Roasting is the process of applying heat to mineral products to change their physical or chemical qualities for the purpose of improving their amenability to other milling processes.
- (9) Pelletizing is the process in which finely divided material is rolled in a drum, cone, or on an inclined disk so that the particles cling together and roll up into small spherical pellets. This process is applicable to milling only when accomplished in relation to, and as an integral part of, other milling processes.
- (10) Sintering is the process of agglomerating small particles, cakes or masses, usually by grinding together constituents through the application of heat at temperatures below the melting point. This process is applicable to milling only when accomplished in relation to, and as an integral part of, other milling processes.
- (11) Evaporating is the process of upgrading or concentrating soluble salts from naturally occurring or other brines, by causing uncombined water to be removed by application of solar or other heat.

- (12) ~~Calcing is the process of applying heat to mineral materials to upgrade them by driving off volatile chemically combined components and affecting physical changes. This process is applicable to milling only when accomplished in relation to, and as an integral part of, other milling processes.~~
- (13) ~~Kiln treatment is the process of roasting, calcing, drying, evaporating, and otherwise upgrading mineral products through the application of heat. This process is applicable to milling only when accomplished in relation to, and as an integral part of, other milling processes.~~
- (14) ~~Sawing and cutting stone is the process of reducing quarried stone to smaller sizes prior to removal from the quarry, at the quarry site, and before the stone is polished, engraved, or otherwise finished to its final form.~~
- (15) ~~Heat expansion is a process for upgrading material by sudden heating of the substance in rotary kiln or sinter hearth to cause the material to bloat or expand to produce a lighter material per unit of volume.~~
- (16) ~~Retorting is a process usually performed at certain mine sites, and is accomplished by heating the crushed material in a closed retort to volatilize the metal, material or hydrocarbon which is then condensed and recovered as upgraded metal, material or hydrocarbon.~~
- (17) ~~Leaching is the process by which a soluble metallic compound is removed from a mineral by selectively dissolving it in a suitable solvent, such as water, sulfuric acid, hydrochloric acid, cyanide, or other solvent, to make the compound amenable to further milling processes.~~
- (18) ~~Briquetting is a process by which iron ore, or other pulverized mineral commodities, are bound together into briquettes, under pressure, with or without a binding agent, and thus made conveniently available for further processing.~~

(i) The following are types of operations, which may be on or contiguous to mining and/or milling operations listed herein, over which MESA does

not have authority to prescribe and enforce employee safety and health standards, and over which the North Carolina Department of Labor has full authority, to prescribe and enforce safety and health standards regarding working conditions of employees. These procedures are beyond milling:

- (1) ~~In gypsum board plants authority commences at the point when milling, as defined, is completed, and the gypsum and other materials are combined to enter the sequential processes necessary to produce gypsum board.~~
- (2) ~~In brick plants authority commences at the point when milling, as defined, is completed and clay and other materials are combined to enter the sequential processes to produce a fired brick product.~~
- (3) ~~In ceramic plants authority commences at the point when milling, as defined, is completed and clay and other materials are combined to enter the next sequential processes to produce a ceramic product.~~
- (4) ~~In fertilizer products plants authority commences at the point when milling, as defined, is completed, and two or more raw materials are combined to produce another product. Note that a "kiln," as it relates to these products for roasting and tying, is considered to be within the scope of the milling definition.~~
- (5) ~~In asphalt mixing plants authority commences at the point where milling, as defined, is completed, and gravel or crushed stone and asphaltic material are combined to enter sequential processes to produce an end product.~~
- (6) ~~In cement plants MESA shall have exclusive authority for the enforcement of safety and health standards.~~
- (7) ~~In concrete ready-mix or batch plants authority commences at the point when milling, as defined, is completed, and cement, aggregates and water are combined to produce cement.~~
- (8) ~~In custom stone finishing plants authority commences at the point when milling, as defined, is completed, and the stone is polished, engraved, or otherwise processed to obtain a finished product.~~
- (9) ~~In smelting plants authority commences~~

at the point where milling, as defined, is completed, and metallic ores or concentrates are blended with other materials and are thermally processed to produce metal.

(10) In electrowinning plants authority commences at the point where milling, as defined, is completed, and metals are recovered by means of electrochemical processes.

(11) In refining plants authority commences at the point where milling, as defined, is completed, and material enters the sequential processes to produce a product of higher purity.

(j) In brick and tile plants OSHA inspections shall begin and MESA mining and milling inspections stop at the point blended raw materials are introduced into the pugmill or extruder machine. In cement operations OSHA inspection shall begin at the point that cement, aggregates, etc., are delivered to the mixing plant. In asphalt and ready mix batch plants MESA will do no inspections of these operations from the point raw materials are delivered to the batch plant properties. These properties are clearly assigned to OSHA. All surface construction will be inspected by OSHA except where the mining company employees work at construction in conjunction with operations of the mill and/or mine. MESA inspections will begin when the plant begins to process raw material from the mining operations. Underground development (construction) will be inspected by MESA. In lime operations MESA mining and milling inspections shall be for the entire production process from mine to shipment of the finished product. In smelters MESA mining and milling inspections shall stop when the raw materials are introduced into the smelting furnaces.

Statutory Authority G.S. 95-136(g).

.1904 STANDARDS: OPERATIONAL PROCEDURE: REQUIREMENTS OF OSHANC

(a) Standard 29 CFR 1928 (Occupational Safety and Health Standards for Agriculture) states that except to the extent specified in 1928.21(a) the standards contained in Subparts B to S of Part 1910 do not apply to agricultural operations.

(b) Chapter VII, paragraph A(2) (general duty requirement) of the North Carolina OSHA Operations Manual requires that the general duty provisions be used where there are no specific

standards applicable and the conditions meet the requirements for "serious" classifications.

(c) The general duty clause shall be used to cite for:

(1) serious violations of any standards specifically exempted by Part 1928, or

(2) all conditions which satisfy the requirements for a serious violation and for which no standards have been promulgated.

The scope of the application of the general duty clause in accordance with this notice will include electrical wiring and apparatus, environmental health and toxic substances, materials handling, walking and working surfaces, fire protection, and any other conditions which affect the safety and health of agricultural employees.

Statutory Authority G.S. 95-136(g).

SECTION .2000 - TOXIC AND HAZARDOUS SUBSTANCES

.2001 SCOPE

This Section 13 NCAC 7D .2000 contains all the currently effective interpretations of standards contained within Subpart Z Toxic and Hazardous Substances of Part 1910 of Title 29 of the Code of Federal Regulations.

Statutory Authority G.S. 95-136(g).

.2002 APPLICATION AND DISTRIBUTION

All rules filed within this Section are distributed to NC OSHA field personnel, supervisors and staff in the form of standards notices. The rules contained in this Section are official interpretations and represent enforcement policy regarding NC OSHA's application of safety and health rules and regulations.

Statutory Authority G.S. 95-136(g).

.2003 EXPOSURE TO BENZENE: EMERGENCY TEMPORARY STANDARDS

(a) Standard 29 CFR 1910.1028 is the emergency temporary standard for employee exposure to benzene [C(6)H(6)]. It applies to the production, reaction, release, packaging, repackaging, storage, transportation, handling, or use of benzene. This Section does not apply to retail automotive service stations, where the exposure to benzene is only from liquid mixtures containing one percent or less of benzene by

volume, or through vapors from these liquids. The exposure limit is one part benzene per million parts of air (one ppm) as an eight hour time weighted average. The ceiling value is five ppm as averaged over any 15 minute period. No eye or dermal exposure is permitted. There is a requirement for each company to notify the nearest OSHA area office if benzene is present in that company. Employer monitoring on a regular basis is required. Engineering controls, work practices, respiratory protection, protective clothing and equipment, and medical surveillance are discussed.

(b) Standard 29 CFR 1910.1000(b) is the benzene Table Z-2. Benzene has a threshold limit value (TLV) of 10 ppm for an eight hour time weighted day, with an acceptable ceiling limit of 25 ppm, and a maximum peak of 50 ppm for a period of 10 minutes maximum above the acceptable ceiling concentration for an eight hour shift.

(c) The emergency temporary standard has been adopted by NC OSHA. A single judge of the United States Court of Appeals for the Fifth Circuit has temporarily stayed the emergency temporary standard on benzene (29 CFR 1910.1028). The Federal Solicitor's Office has petitioned the court to vacate this stay.

(d) No enforcement activity will be conducted with respect to the emergency temporary standard until further notice. Enforcement action on benzene will be continued under 1910.1000(b), 1910.132 to 1910.134, and 1910.141.

Statutory Authority G.S. 95-136(g).

.2004 TABLE Z-1: CHLORINE

(a) 29 CFR 1910.111 Table Z-1 is amended by adding a "C" (ceiling) notation before the chlorine listing thereby making the one part per million exposure limit a ceiling standard.

(b) On July 17, 1979, U.S. OSHA lifted its administrative stay of the chlorine standard and reinstated a ceiling level for chlorine that had been typographically omitted since 1971. During the stay of the standard, comments were submitted on whether a ceiling level or time weighted average was more appropriate and whether an even more stringent standard recommended by NIOSH was appropriate. After careful review of the comments, the final action stated in Paragraph (a) of this Rule was taken. The corrected standard will take effect on October 15, 1979, to allow employers to comply with this Rule.

(c) Effective October 15, 1979, enforcement activity with regard to the chlorine standard will

be based upon the ceiling limit stated in Paragraph (a) of this Rule. During the interim period, the chlorine standard shall be enforced as an eight hour, time weighted average.

Statutory Authority G.S. 95-136(g).

SUBCHAPTER 7E - CONSTRUCTION: STANDARDS INTERPRETATIONS

SECTION .0100 - GENERAL SAFETY AND HEALTH PROVISIONS

.0101 SCOPE

This Section 13 NCAC 7E .0100 contains all the currently effective interpretations of standards contained within Subpart C General Safety and Health Provisions of Part 1926 of Title 29 of the Code of Federal Regulations.

Statutory Authority G.S. 95-136(g).

.0102 APPLICATION AND DISTRIBUTION

All rules filed within this Section are distributed to NC OSHA field personnel, supervisors and staff in the form of standards notices. The rules contained in this Section are official interpretations and represent enforcement policy regarding NC OSHA's application of safety and health rules and regulations.

Statutory Authority G.S. 95-136(g).

SECTION .0200 - OCCUPATIONAL HEALTH AND ENVIRONMENTAL CONTROLS

.0201 SCOPE

This Section 13 NCAC 7E .0200 contains all the currently effective interpretations of standards contained within Subpart D Occupational Health and Environmental Controls of Part 1926 of Title 29 of the Code of Federal Regulations.

Statutory Authority G.S. 95-136(g).

.0202 APPLICATION AND DISTRIBUTION

All rules filed within this Section are distributed to NC OSHA field personnel, supervisors and staff in the form of standards notices. The rules contained in this Section are official interpretations and represent enforcement policy regarding NC OSHA's application of safety and health rules and regulations.

Statutory Authority G.S. 95-136(g).

SECTION .0300 - PERSONAL PROTECTION AND LIFESAVING EQUIPMENT

.0301 SCOPE

This Section 13 NCAC 7E .0300 contains all the currently effective interpretations of standards contained within Subpart E - Personal Protection and Lifesaving Equipment of Part 1926 of Title 29 of the Code of Federal Regulations.

Statutory Authority G.S. 95-136(g).

.0302 APPLICATION AND DISTRIBUTION

All rules filed within this Section are distributed to NC OSHA field personnel, supervisors and staff in the form of standards notices. The rules contained in this Section are official interpretations and represent enforcement policy regarding NC OSHA's application of safety and health rules and regulations.

Statutory Authority G.S. 95-136(g).

.0303 EYE AND FACE PROTECTION: CHEMICAL EXPOSURES: CONSTRUCTION

A standards notice has been developed to define NC OSHA policy regarding eye and face protection. The interpretation applies to both general industry and construction. The notice appears at 13 NCAC 7D .0605, because its primary application will be in general industry.

Statutory Authority G.S. 95-136(g).

SECTION .0400 - FIRE PROTECTION AND PREVENTION

.0401 SCOPE

This Section 13 NCAC 7E .0400 contains all the currently effective interpretations of standards contained within Subpart F - Fire Protection and Prevention of Part 1926 of Title 29 of the Code of Federal Regulations.

Statutory Authority G.S. 95-136(g).

.0402 APPLICATION AND DISTRIBUTION

All rules filed within this Section are distributed to NC OSHA field personnel, supervisors and staff in the form of standards notices. The rules contained in this Section are official interpretations

and represent enforcement policy regarding NC OSHA's application of safety and health rules and regulations.

Statutory Authority G.S. 95-136(g).

.0403 FIRE EXTINGUISHERS FOR CONSTRUCTION SITES

(a) Standard 29 CFR 1926.150(e)(2)(vi) specifies that a fire extinguisher, rated not less than 10B, shall be provided within 50 feet of wherever more than five gallons of flammable or combustible liquids or five pounds of flammable gas are being used on the job site. This requirement does not apply to the integral fuel tanks of motor vehicles.

(b) Standard 29 CFR 1926.152(d)(4) specifies that at least one portable fire extinguisher having a rating of not less than 20 B: C units shall be provided on all tank trucks or other vehicles used for transporting and/or dispensing flammable or combustible liquids.

(c) Standard 29 CFR 1926.150(e)(2)(vi) specifies when a 10B extinguisher is required based on the amount of flammable or combustible liquid or flammable gas being used. Standard 29 CFR 1926.152(d)(4) specifies when a 20 B: C rated extinguisher is required but does not consider as a basis the amount of flammable or combustible liquids being used. The construction industry has inquired about the application of the above two standards as they relate to their vehicles used for transporting flammable or combustible liquids. They have been particularly concerned since the majority of their containers are five gallon (or less) capacity vessels, yet they have been required to provide 20 B: C rated fire extinguishers on the vehicle per 29 CFR 1926.152(d)(4) rather than a 10B rated extinguisher per 29 CFR 1926.150(e)(2)(vi), within 50 feet of usage on the job site.

(d) Construction firms will not be required to provide fire extinguishers for their vehicles unless they are transporting or dispensing more than five gallons of flammable or combustible liquids.

(e) Firms transporting or dispensing more than five gallons but less than ten gallons of flammable or combustible liquids must have a fire extinguisher with a 10B rating in accordance with 29 CFR 1926.150(e)(2)(vi).

(f) Firms transporting or dispensing more than 10 gallons of flammable or combustible liquids must have a 20 B: C rated fire extinguisher in accordance with 29 CFR 1926.152(d)(4).

Statutory Authority G.S. 95-136(g).

SECTION .0500 - SIGNS: SIGNALS AND BARRICADES

.0501 SCOPE

This Section 13 NCAC 7E .0500 contains all the currently effective interpretations of standards contained within Subpart G—Signs, Signals, and Barricades of Part 1926 of Title 29 of the Code of Federal Regulations.

Statutory Authority G.S. 95-136(g).

.0502 APPLICATION AND DISTRIBUTION

All rules filed within this Section are distributed to NC OSHA field personnel, supervisors and staff in the form of standards notices. The rules contained in this Section are official interpretations and represent enforcement policy regarding NC OSHA's application of safety and health rules and regulations.

Statutory Authority G.S. 95-136(g).

SECTION .0600 - MATERIALS HANDLING: STORAGE: USE AND DISPOSAL

.0601 SCOPE

This Section 13 NCAC 7E .0600 contains all the currently effective interpretations of standards contained within Subpart H—Materials Handling, Storage, Use and Disposal of Part 1926 of Title 29 of the Code of Federal Regulations.

Statutory Authority G.S. 95-136(g).

.0602 APPLICATION AND DISTRIBUTION

All rules filed within this Section are distributed to NC OSHA field personnel, supervisors and staff in the form of standards notices. The rules contained in this Section are official interpretations and represent enforcement policy regarding NC OSHA's application of safety and health rules and regulations.

Statutory Authority G.S. 95-136(g).

SECTION .0700 - TOOLS: HAND AND POWER

.0701 SCOPE

This Section 13 NCAC 7E .0700 contains all the currently effective interpretations of standards contained within Subpart I—Tools—Hand and

~~Power of Part 1926 of Title 29 of the Code of Federal Regulations.~~

Statutory Authority G.S. 95-136(g).

.0702 APPLICATION AND DISTRIBUTION

All rules filed within this Section are distributed to NC OSHA field personnel, supervisors and staff in the form of standards notices. The rules contained in this Section are official interpretations and represent enforcement policy regarding NC OSHA's application of safety and health rules and regulations.

Statutory Authority G.S. 95-136(g).

SECTION .0800 - WELDING AND CUTTING

.0801 SCOPE

This Section 13 NCAC 7E .0800 contains all the currently effective interpretations of standards contained within Subpart J—Welding and Cutting of Part 1926 of Title 29 of the Code of Federal Regulations.

Statutory Authority G.S. 95-136(g).

.0802 APPLICATION AND DISTRIBUTION

All rules filed within this Section are distributed to NC OSHA field personnel, supervisors and staff in the form of standards notices. The rules contained in this Section are official interpretations and represent enforcement policy regarding NC OSHA's application of safety and health rules and regulations.

Statutory Authority G.S. 95-136(g).

SECTION .0900 - ELECTRICAL

.0901 SCOPE

This Section 13 NCAC 7E .0900 contains all the currently effective interpretations of standards contained within Subpart K—Electrical of Part 1926 of Title 29 of the Code of Federal Regulations.

Statutory Authority G.S. 95-136(g).

.0902 APPLICATION AND DISTRIBUTION

All rules filed within this Section are distributed to NC OSHA field personnel, supervisors and staff in the form of standards notices. The rules contained in this Section are official interpretations

and represent enforcement policy regarding NC OSHA's application of safety and health rules and regulations.

Statutory Authority G.S. 95-136(g).

.0903 GROUND-FAULT PROTECTION IN CONSTRUCTION OPERATIONS

(a) ~~29 CFR 1910.309(e) and 29 CFR 1926.400(h) apply to ground fault protection.~~

(b) ~~Since the initiation of enforcement of the ground fault protection requirements of the OSHA standards, several questions have repeatedly occurred.~~

(c) ~~For the purpose of this standards notice and the referenced sections of the OSHA regulations, the term "ground fault protection" refers to a device or program intended to minimize the likelihood of employee injury from electrical faults (unintentional paths) to ground. The protection may be provided by a ground fault circuit interrupting device (GFCI) or by an assured equipment grounding conductor program:~~

(1) ~~A construction site, for the purpose of ground fault protection requirements, is any location where construction, alteration, and/or repair, including painting and decorating takes place, as set forth in 29 CFR 1910.12 and 29 CFR 1926.13. The term "alteration" includes demolition. This site may be on or within an existing structure, or a completely new location. Regular manufacturing and production line operations are not included, such as mobile home manufacturing.~~

(2) ~~Ground fault protection in the form of GFCI or an assured grounding program shall be provided by each employer of employees required to use 120 volt, 15- and 20-ampere receptacles on construction sites. In some cases contractors may make their own arrangements on a given jobsite for provision of ground fault protection, thereby relieving some of them of the physical operation of installing the protection. This arrangement, however, does not relieve these contractors of the legal responsibility for providing the ground fault protection to their employees. In cases where no GFCI or assured grounding program is present, the employers of all employees exposed shall be cited. In a~~

~~situation where a contractor has been required by the job contract to provide temporary power and other general utilities on the construction site, his responsibility for providing ground fault protection under the OSHA regulations only applies to the protection of his employees. Each contractor on the site is still legally responsible for protecting his own employees by some form of ground fault protection. The contractor responsible for providing the temporary power on the site should notify each of the other contractors on the site of the existence or nonexistence of ground fault protection at the 120 volt, 15- and 20-ampere receptacles on the construction site.~~

(3) ~~Temporary wiring is a class or method of wiring which is specifically permitted by the National Electrical Code (ANSI/NFPA No. 70) for use during periods of construction, remodeling, maintenance, repair or demolition of buildings, structures, equipment or similar items. Permanent wiring is a complete system or portion thereof, which has been accepted by the customer, owner, and electrical inspector. Such a permanent system would require covers, conduits, conductors, grounds, bonds, anchors, etc. Where extension cords or any similar nonpermanent wiring is used with permanent wiring, the extension cord and all nonpermanent wiring shall be considered temporary wiring and 29 CFR 1926.400(h) or 29 CFR 1910.309(e) shall be cited accordingly. Where tools or appliances are equipped with a cord and plug, such wiring shall not be considered temporary for the purposes of 29 CFR 1910.309(e) and 29 CFR 1926.400(h) if the cord and plug are considered a part of the tool or appliance. Where GFCI devices are chosen to comply with 29 CFR 1910.309(e) or 29 CFR 1926.400(h), a GFCI breaker, a fixed GFCI receptacle or a portable GFCI receptacle may be used. All receptacles on the same circuit and "down stream" from a GFCI device are normally protected by that device. The alternative method of complying with 29 CFR 1910.309(e) or~~

~~29 CFR 1926.400(h) is an assured equipment grounding program.~~

- ~~(4) When double insulated tools are encountered on a construction site, professional judgment must be exercised in evaluating the presence of a violation and the level of hazard. The National Electrical Code exempts tools protected by an approved system of double insulation from the requirements for electrical grounding. There is no such exemption from the ground fault protection requirements under 29 CFR 1926.400(h). If an inspector encounters double insulated tools on a construction site, he or she must determine if these are the only tools likely to be used by the employees on the site. Where double insulated tools are the only type present, the level of hazard may be low and the issuance of a citation may not be necessary. If employees are subject to using power tools of the non-double insulated type, the hazard to employees is greater and some form of ground fault protection must be required.~~
- ~~(5) In testing and evaluating ground fault circuit interrupting devices on a construction site, the specific instruction on the GFCI unit being used should be followed. All GFCI devices are required to have a test button which places a leakage of greater than 6.0 milliamperes on the circuit which is supposed to trip the device. A reset button or switch is also provided. The normal procedure shall be to ask the employer's representative to push the test button after warning anyone using the circuit. Another testing method is to use any one of several portable, plug-in test devices. Most of these test units are a "go, no go" type device which places a greater than 6.0 milliamper "leak" in the circuit which should trip any GFCI device. Some units also have a 4.0 to 5.0 milliamper leak setting which a GFCI device should permit without tripping. A few test devices are equipped with a meter and variable leakage control which will show exactly what current level trips the GFCI device being tested. The~~

instructions for each testing device must be followed closely. Any GFCI device which fails to trip, or trips at a level of greater than 6.0 milliamperes, shall be cited as "failure to provide an approved GFCI device to protect the employees from hazards of electrical ground faults." All GFCI devices and circuits should also be tested for ground using the Woodhead 1750 tester or an equivalent device.

- ~~(6) As indicated in (e) of this Rule, the use of GFCI devices does not remove the requirement for electrical grounding of handheld, cord and plug connected equipment on jobsites. The level of hazard is greatly reduced by the use of approved GFCI devices, and this fact should be taken into consideration when determining what citation or penalty should be proposed.~~
- ~~(7) In evaluating an "assured equipment grounding conductor program" method of ground fault protection on a construction site, at least the items listed below shall be considered. All of these items are necessary for an effective "assured equipment grounding conductor program," and the weakness or absence of any specific item may make the program ineffective and unacceptable. The inspecting officer must exercise professional judgement in evaluating the effectiveness of such a program and the level of protection provided to employees:~~
- ~~(A) The program must cover all cord sets, receptacles (not part of permanent wiring), and cord and plug connected equipment available for use by the employees.~~
 - ~~(B) There must be a written description of the program, including specific details, present at the jobsite. This program must represent what is actually being carried out by the employer on that particular site.~~
 - ~~(C) A competent person or persons must be responsible for implementing the program. One person may have the overall responsibility for the program and the actual cord and equipment testing and recording for several sites, while other competent individuals may conduct daily visual inspections~~

and remove questionable or unsafe equipment from service on each individual site.

- (D) ~~A competent individual must conduct visual inspections and carry out procedures intended to prevent the use of damaged or defective tools.~~
- (E) ~~Appropriate test equipment and procedures must be used in conducting the continuity tests and the wiring and attachment evaluations of the equipment grounding conductors on cords, plugs, and temporary receptacles.~~
- (F) ~~Appropriate test intervals must be established in accordance with the provisions of the standards and additional tests made following suspected damage before returning repaired cords or equipment to service and before first use of a new cord or tool.~~
- (G) ~~Effective procedure or policies shall be instituted by the employer to prevent the use of untested cords and equipment on the site.~~
- (H) ~~An effective method of record keeping and identification of equipment and test intervals shall be established on the site. The methods may range from detailed records to simple color coding system with the code being included in the written program.~~

Statutory Authority G.S. 95-131.

SECTION .1000 - LADDERS AND SCAFFOLDING

.1001 SCOPE

This Section 13 NCAC 7E .1000 contains all the currently effective interpretations of standards contained within Subpart L — Ladders and Scaffolding of Part 1926 of Title 29 of the Code of Federal Regulations.

Statutory Authority G.S. 95-136(g).

.1002 APPLICATION AND DISTRIBUTION

All rules filed within this Section are distributed to NC OSHA field personnel, supervisors and staff in the form of standards notices. The rules contained in this Section are official interpretations and represent enforcement policy regarding

NC OSHA's application of safety and health rules and regulations.

Statutory Authority G.S. 95-136(g).

.1003 CATCH PLATFORMS

(a) ~~Standard 29 CFR 1926.451(u)(3) requires that a catch platform be installed below the working area of roofs more than 16 feet from the ground to eaves with a slope greater than 4 inches in 12 inches without a parapet. In width the platform shall extend two feet beyond the projection of the eaves and shall be provided with a guard rail, mid rail and toe board. This provision shall not apply where employees engaged in work upon such roofs are protected by a safety belt attached to a life line.~~

(b) ~~The term parapet as used in 29 CFR 1926.451(u)(3) is a wall that extends above the roof at least 36 inches.~~

(c) ~~No citations will be issued for roofing brackets under 29 CFR 1926.451(u)(3) if the employer is providing and causing his employees to use catch platforms, parapets or safety belts with life lines attached.~~

Statutory Authority G.S. 95-136(g).

.1004 SCAFFOLDING: GENERAL

(a) ~~Standard 29 CFR 1926.451 states the requirements for scaffolding in construction.~~

(b) ~~As a result of recent requests to clarify the application of parts of the referenced standard in (a) of this Rule, the following guidelines should be used. As in all cases the determination of compliance or noncompliance depends on the conditions the safety officer observed at the time of his inspection.~~

(c) ~~Regarding 29 CFR 1926.451(a)(2); concrete block is not always an "unstable object" when used as a base of scaffolding. The circumstances and techniques under which it is used must be considered to determine its stability.~~

~~Regarding 29 CFR 1926.451(a)(3); a brace is defined in 29 CFR 1926.452(b)(3) as a tie that holds one scaffold member in a fixed position with respect to another member. The fact that a scaffold member has a place for a brace does not necessarily require that the brace be in place, if it interferes with the erection or stocking of the scaffold. This is only true if the scaffolding is capable of supporting four times the maximum intended load and meets the other applicable requirements of 29 CFR 1926.451. Also, the manufacturer's design specifications, particularly~~

with respect to the lateral stresses involved, are an important aspect which must be considered in the decision to remove pieces of bracing.

Regarding 29 CFR 1926.451(a)(7) and (a)(8): a scaffold plank is considered a component of the scaffolding. As such, it must be capable of supporting four times the maximum intended load without failure (a safety factor of four). The fact that a plank might have a split in one end does not automatically mean that it must be removed from service, provided it does not otherwise create a hazard to the employees.

Regarding 29 CFR 1926.451(d)(4): the standard requires scaffold legs to be placed on a foundation that is adequate to support four times the intended load of the scaffold. The standard does not require that base plates always be employed, but only when conditions necessitate their use. For example, the scaffold legs cannot be placed on a mud foundation without a base to prevent the legs from sinking into the mud.

Statutory Authority G.S. 95-136(g).

SECTION .1100 - FLOORS AND WALL OPENINGS: AND STAIRWAYS

.1101 SCOPE

This Section 13 NCAC 7E .1100 contains all the currently effective interpretations of standards contained within Subpart M - Floors and Wall Openings, and Stairways of Part 1926 of Title 29 of the Code of Federal Regulations.

Statutory Authority G.S. 95-136(g).

.1102 APPLICATION AND DISTRIBUTION

All rules filed within this Section are distributed to NC OSHA field personnel, supervisors and staff in the form of standards notices. The rules contained in this Section are official interpretations and represent enforcement policy regarding NC OSHA's application of safety and health rules and regulations.

Statutory Authority G.S. 95-136(g).

.1103 GUARDING OF OPEN-SIDED FLAT ROOFS

(a) Standard 1926.500(d)(1) states: every open-sided floor or platform six feet or more above adjacent floor or ground level shall be guarded by a standard railing, or the equivalent, as specified in paragraph (f)(1) of this section, on all open sides, except where there is entrance to a

ramp, stairway, or fixed ladder. The railing shall be provided with a standard toe board wherever, beneath the open sides, persons can pass, or there is moving machinery, or there is equipment with which falling materials could create a hazard.

(b) There has been much discussion regarding application of 29 CFR 1926.500(d)(1) to open-sided flat roofs. A recent court ruling lends support to the opinion that the quoted standard is not specific enough to apply in cases where employees working on flat roofs are exposed to the hazard of falling.

(c) Citations will be issued for a violation of 29 CFR 1926.28(a) (requiring safety belts) when employees are found exposed to the open sides of flat roofs over six feet from adjacent floor or ground level. Citations will be issued only if protection in the form of a railing (standard railing or its equivalent) as specified under 29 CFR 1926.500(f)(1) is not provided.

Statutory Authority G.S. 95-136(g).

SECTION .1200 - CRANES: DERRICKS: HOISTS: ELEVATORS: AND CONVEYORS

.1201 SCOPE

This Section 13 NCAC 7E .1200 contains all the currently effective interpretations of standards contained within Subpart N - Cranes, Derricks, Hoists, Elevators, and Conveyors of Part 1926 of Title 29 of the Code of Federal Regulations.

Statutory Authority G.S. 95-136(g).

.1202 APPLICATION AND DISTRIBUTION

All rules filed within this Section are distributed to NC OSHA field personnel, supervisors and staff in the form of standards notices. The rules contained in this Section are official interpretations and represent enforcement policy regarding NC OSHA's application of safety and health rules and regulations.

Statutory Authority G.S. 95-136(g).

.1203 UPPER AND LOWER CONTROLS ON ELEVATING WORK PLATFORMS

(a) Standards

(1) 29 CFR 1910.67(b)(1) states: Unless otherwise provided in this section, aerial devices (aerial lifts) acquired on or after July 1, 1975, shall be designed

and constructed in conformance with the applicable requirements of the American National Standard for "Vehicle Mounted Elevating and Rotating Work Platforms," ANSI A92.2-1969, including appendix. Aerial lifts acquired for use before July 1, 1975, which do not meet the requirements of ANSI A92.2-1969 may not be used after July 1, 1976, unless they shall have been modified so as to conform with the applicable design and construction requirements of A92.2-1969.

(2) 29 CFR 1926.556(a)(1) states: Unless otherwise provided in this section aerial lifts acquired for use on or after the effective date of this section shall be designed and constructed in conformance with the applicable requirements of the American National Standard for "Vehicle Mounted Elevating and Rotating Work Platforms," ANSI A92.2-1969, including appendix. Aerial lifts acquired before the effective date of this section, which do not meet the requirements of ANSI A92.2-1969, may not be used after January 1, 1976, unless they shall have been modified so as to conform with the applicable design and construction requirements of ANSI A92.2-1969.

(3) 29 CFR 1910.67(c)(2)(ix) and 29 CFR 1926.556(b)(2)(ix) state: Articulating boom and extensible boom platforms, primarily designed as personnel carriers, shall have both platform (upper) and lower controls. Upper controls shall be in or beside the platform within easy reach of the operator. Lower controls shall provide for overriding the upper controls. Controls shall be plainly marked as to their function. Lower level controls shall not be operated unless permission has been obtained from the employee in the lift, except in case of emergency.

(4) 29 CFR 1926.955(e)(12) states: All aerial lifts to be used for live-line barehand work shall have dual controls (lower and upper) as required in paragraph (e)(12)(i) and (ii) of this section:

(A) The upper controls shall be within

easy reach of the employee in the basket. If a two-basket type lift is used access to the controls shall be within easy reach from either bucket.

(B) The lower set of controls shall be located near base of the boom that will permit override operation of equipment at any time.

(5) ANSI 92.2-1969, Section 4.3, "Controls" states: Articulating boom and extensible boom platforms primarily designed as personnel carrier shall have both platform (upper) and lower controls. Upper controls shall be in or beside the platform within easy reach of the operator. Lower controls shall be plainly marked as to their function.

(b) Definitions

(1) "Aerial device," 1910.67(a)(1), shall be any vehicle-mounted device, telescoping or articulating, or both, which is used to position personnel; and shall include 1910.67(b)(1) extensible boom platforms, aerial ladders, articulating boom platforms, vertical towers, and a combination of any of these.

(2) "Combination device" as referred to herein shall be any aerial device constructed or used so as to enable its application for work purposes in addition to personnel lifting and positioning.

(3) "Primarily designed" as used in this Section shall mean the intended purpose of the manufacturer, assembler, owner, or user of the aerial or combination device. Where multiple purposes exist, "primarily designed" shall mean that design, construction, or alteration of the aerial or combination device apparent or most representative of the employee exposure to the apparatus.

(e) Since the initial adoption of the OSHA standards in 1972 there has been substantial confusion as to the requirement for upper and lower controls on vehicle-mounted elevating and rotating work platforms, especially on combination type or multipurpose equipment. This confusion continued after the adoption of the telecommunication standards in March of 1975. The use of such equipment is common in industries such as electrical transmission and distribution, telecommunications, tree trimming, outdoor advertising, and similar operations. Up to

this time, the procedure for determining the need for dual controls has been to consider the purpose for which the boom or other lifting equipment was "primarily designed." The problems with this approach are:

- (1) The term "primarily designed" has never been clearly defined.
- (2) The platform and associated lifting equipment may be used for a variety of purposes.
- (3) The equipment may be altered or redesigned by the user to suit his particular needs.

The main consideration in determining upper and lower control requirements should therefore be the application or use of the equipment package.

(d) Interpretation

- (1) As stated in 29 CFR 1910.67(e)(2)(ix) and 29 CFR 1926.556(b)(2)(ix), all equipment consisting of only elevating or rotating platform requires both upper and lower controls. This applies to equipment where the bucket is permanently attached or designed to remain in place at all times.
- (2) In accordance with 29 CFR 1926.955(e)(12) all aerial or combination devices used in live-line barehand work require both upper and lower controls be present.
- (3) Where multipurpose equipment, such as digger derricks and other combination devices, is involved and the purpose for which such equipment was primarily designed is not clear, upper and lower controls shall be provided on each and every piece of such equipment on which the elevating and rotating platform of such equipment is being utilized for carrying personnel more than 50 percent of the time that such equipment is actually in use at job sites within any given 30 day period.
- (4) In determining the use of the equipment interviews of the people actually using the device shall be utilized as well as discussions with management and review of any available records.
- (5) Equipment and operations involving vehicle mounted elevating and rotating work platforms must also comply with all other OSHA standards applicable to that equipment or those operations.

(e) In determining the requirement for upper and lower controls on combination type and

multipurpose vehicle, the procedure will be to ascertain the primary application of the piece of equipment when actually in use and to cite accordingly. Any aerial devices whose major purpose is to lift or position personnel, and any aerial or combination device used in live-line barehand work shall have both upper and lower controls in accordance with the applicable standards.

Statutory Authority G.S. 95-136(g).

SECTION .1300 - MOTOR VEHICLES: MECHANIZED EQUIPMENT AND MARINE OPERATIONS

.1301 SCOPE

This Section 13 NCAC 7E .1300 contains all the currently effective interpretations of standards contained within Subpart O Motor Vehicles, Mechanized Equipment, and Marine Operations of Part 1926 of Title 29 of the Code of Federal Regulations.

Statutory Authority G.S. 95-136(g).

.1302 APPLICATION AND DISTRIBUTION

All rules filed within this Section are distributed to NC OSHA field personnel, supervisors and staff in the form of standards notices. The rules contained in this Section are official interpretations and represent enforcement policy regarding NC OSHA's application of safety and health rules and regulations.

Statutory Authority G.S. 95-136(g).

SECTION .1400 - EXCAVATIONS: TRENCHING AND SHORING

.1401 SCOPE

This Section 13 NCAC 7E .1400 contains all the currently effective interpretations of standards contained within Subpart P Excavations, Trenching and Shoring of Part 1926 of Title 29 of the Code of Federal Regulations.

Statutory Authority G.S. 95-136(g).

.1402 APPLICATION AND DISTRIBUTION

All rules filed within this Section are distributed to NC OSHA field personnel, supervisors and staff in the form of standards notices. The rules contained in this Section are official interpretations and represent enforcement policy regarding

NC-OSHA's application of safety and health rules and regulations.

Statutory Authority G.S. 95-136(g).

SECTION .1500 - CONCRETE: CONCRETE FORMS AND SHORING

.1501 SCOPE

This Section 13 NCAC 7E .1500 contains all the currently effective interpretations of standards contained within Subpart Q—Concrete, Concrete Forms and Shoring of Part 1926 of Title 29 of the Code of Federal Regulations.

Statutory Authority G.S. 95-136(g).

.1502 APPLICATION AND DISTRIBUTION

All rules filed within this Section are distributed to NC-OSHA field personnel, supervisors and staff in the form of standards notices. The rules contained in this Section are official interpretations and represent enforcement policy regarding NC-OSHA's application of safety and health rules and regulations.

Statutory Authority G.S. 95-136(g).

.1503 MASONRY WALLS

(a) Standard 29 CFR 1926.700(a) concerns concrete construction and masonry work. This standard specifies that all equipment and materials used in concrete construction and masonry work shall meet the applicable requirements for design, construction, inspection, testing, maintenance and operations as prescribed in American National Standards Institute, bulletin A10.9-1970.

(b) American National Standards Institute, bulletin A10.9-1970, paragraph 12.5 concerning shoring and bracing specifies that masonry walls shall be temporarily shored and braced until the designed lateral strength is reached to prevent collapse due to wind or other forces.

(c) The term designed lateral strength is interpreted as the strength the cured wall will withstand when tied in with bar joists or other horizontal support members. Masonry walls shall be shored or braced therefore until the horizontal support members (usually bar joists) are in place.

(d) Strong winds pose a hazard by often blowing down masonry walls on construction job sites which have not been shored or braced to prevent their collapse. Particular attention should be given to job sites with masonry walls not shored or braced and which are not topped out (i.e., the bar

joists or other horizontal support members are not in place).

(e) Masonry walls may be of stone, rock, brick, block or tile; however, the safety officer must use professional judgment in determining which may need shoring and bracing, for example, free standing masonry walls without openings for windows or doors are more likely to be blown down than the walls with openings in them.

Statutory Authority G.S. 95-136(g).

SECTION .1600 - STEEL ERECTION

.1601 SCOPE

This Section 13 NCAC 7E .1600 contains all the currently effective interpretations of standards contained within Subpart R—Steel Erection of Part 1926 of Title 29 of the Code of Federal Regulations.

Statutory Authority G.S. 95-136(g).

.1602 APPLICATION AND DISTRIBUTION

All rules filed within this Section are distributed to NC-OSHA field personnel, supervisors and staff in the form of standards notices. The rules contained in this Section are official interpretations and represent enforcement policy regarding NC-OSHA's application of safety and health rules and regulations.

Statutory Authority G.S. 95-136(g).

.1603 FALL PROTECTION IN STRUCTURAL STEEL ERECTION

(a) Continued confusion and uncertainty exists over the application of fall protection and related safety devices and personal protective equipment requirements to steel erection operations. This Rule is intended to further clarify the requirements and to establish a standard interpretation to be enforced by all safety officers. This Rule sets forth policies to be followed in determining at what height fall protection is required and what constitutes acceptable fall protection.

(b) The basic guidelines on any construction site for fall protection are 1926.500(d)(1) requiring guardrail protection on any work platform six feet or more above adjacent surfaces and 1926.28(a) requiring protection in any situation where the hazard of falling is reduced by personal protective equipment. These standards apply to all operations on any construction site except as otherwise specified in the standards, such as

scaffold platforms. Based on the definition of steel erection set forth in 13 NCAC 7E .1604, operations involving the handling, fitting, fastening, and dismantling of structural and plate steel are exempt from the basic height guidelines above, but operations such as placing and fastening temporary flooring or decking (less than .18 inches thick) are not, no matter who does it [1926.750(b)(2)(iii)]. In steel erection operations conforming to the definition in 13 NCAC 7E .1604, the basic personal fall protection must be provided in any situation where the hazard of falling exists in accordance with 1926.28 or 1926.750(b)(1)(iii). Where structural steel is being connected, temporary floor or decking shall be maintained within two stories or 30 feet (or whichever is less) directly below the operations; 1926.750(b)(2)(i); or, in the absence of this and where scaffolding is not used, safety nets shall be installed and maintained within 25 feet; 1926.750(b)(1)(ii), including perimeter work.

(e) The guidelines for what constitutes acceptable fall protection are fairly clearly presented in the referenced standards including 1926.104 for safety belts and lifelines; 1926.105 for safety nets; 1926.500(f) for guardrails; 1926.750(b) for safety nets, temporary floors, safety railings, and safety belts in specific steel operations. The best method for positive protection of exposed employees is safety belt and lifeline properly secured. In situations where safety belts cannot be used then the alternatives of safety nets or temporary flooring or decking must be employed. When such methods are used protection must extend at least eight feet beyond the perimeter of building in areas below exposed employees, this includes connecting operations.

(d) All employees are entitled to safe and healthful working conditions, including protection against falling during steel erection operations. In recognition of the difficulties and complexities of steel erection operations, special considerations are made allowing greater distance of fall potential for certain operations and protection methods. Protection is required and must be used, even on building perimeters. Steel erection is determined by the specific operations involved not by the type of contractor or the title of the employer or employee. As with any other standard, violations are based on observed or potential exposure of employees. If a safety officer observes an employee exposed to a hazard of falling, he must determine what, if any, protection has been provided and whether it is adequate for the hazard involved. Some type of protection must be

provided in every case. The safety officer must be careful to cite the most applicable standard and properly document all facts involved. In most cases photographs should be taken and labeled clearly.

Statutory Authority G.S. 95-136(g).

.1604 STEEL ERECTION: DEFINITION TERM

(a) The purpose of this standard notice is to clarify the position of the OSHA division relative to the term steel erection.

(b) ANSI A10.13 - 1972 applies to steel erection which is defined as handling, fitting, fastening, and dismantling of structural and plate steel at a final in place field erection site.

(c) The American Institute of Steel Construction's Manual of Steel Construction defines structural steel as consisting of the following:

- (1) anchors for structural steel;
- (2) bases of steel or iron;
- (3) beams, purlins, girts;
- (4) bearing plates for structural steel;
- (5) bearing shoes for bridges;
- (6) bracing;
- (7) brackets;
- (8) bridge pins;
- (9) bridge railings of steel;
- (10) columns;
- (11) counterweight boxes for bridges;
- (12) crane rails and stops;
- (13) door frames constituting part of the steel framing;
- (14) expansion joints connected to the steel frame;
- (15) floor plates (checkered or smooth) connected to the steel frame;
- (16) girders of steel;
- (17) grillage beams and girders of steel;
- (18) hangers of structural steel, if attached to the structural steel framing and shown on the framing plans;
- (19) lintels shown on the framing plans or otherwise enumerated or scheduled;
- (20) marquees (structural steel frame only);
- (21) separators, angles, tees, clips, and other detail fittings essential to the structure steel frame;
- (22) suspended ceiling supports of structural shapes three inches or greater in depth;
- (23) shop rivets, permanent shop bolts, bolts required to assemble parts for shipment and shop welds;

- (24) — struts;
- (25) — tie, hanger and sag rods forming part of the structural steel frame; and
- (26) — trusses.

(d) — Plate steel is defined by the American Institute of Steel Construction's Manual of Steel Construction as:

- (1) — plates over eight inches in width, .203 inches and over in thickness;
- (2) — plates over 48 inches in width, .180 inches and over in thickness.

(e) — Interpretation. Work being performed meeting the definition of steel erection as stated by ANSI A10.13 — 1972 and utilizing structural or plate steel as defined by the Manual of Steel Construction will be subject to the provisions of 29 CFR 1926.750, 751, and 752 and other applicable standards.

Statutory Authority G.S. 95-136(g).

SECTION .1700 - TUNNELS: SHAFTS: CAISSONS: COFFERDAMS: AND COMPRESSED AIR

.1701 SCOPE

This Section 13 NCAC 7E .1700 contains all the currently effective interpretations of standards contained within Subpart S — Tunnels, Shafts, Caissons, Cofferdams, and Compressed Air of Part 1926 of Title 29 of the Code of Federal Regulations.

Statutory Authority G.S. 95-136(g).

.1702 APPLICATION AND DISTRIBUTION

All rules filed within this Section are distributed to NC OSHA field personnel, supervisors and staff in the form of standards notices. The rules contained in this Section are official interpretations and represent enforcement policy regarding NC OSHA's application of safety and health rules and regulations.

Statutory Authority G.S. 95-136(g).

SECTION .1800 - DEMOLITION

.1801 SCOPE

This Section 13 NCAC 7E .1800 contains all the currently effective interpretations of standards contained within Subpart T — Demolition of Part 1926 of Title 29 of the Code of Federal Regulations.

Statutory Authority G.S. 95-136(g).

.1802 APPLICATION AND DISTRIBUTION

All rules filed within this Section are distributed to NC OSHA field personnel, supervisors and staff in the form of standards notices. The rules contained in this Section are official interpretations and represent enforcement policy regarding NC OSHA's application of safety and health rules and regulations.

Statutory Authority G.S. 95-136(g).

SECTION .1900 - BLOCKING AND USE OF EXPLOSIVES

.1901 SCOPE

This Section 13 NCAC 7E .1900 contains all the currently effective interpretations of standards contained within Subpart U — Blocking and Use of Explosives of Part 1926 of Title 29 of the Code of Federal Regulations.

Statutory Authority G.S. 95-136(g).

.1902 APPLICATION AND DISTRIBUTION

All rules filed within this Section are distributed to NC OSHA field personnel, supervisors and staff in the form of standards notices. The rules contained in this Section are official interpretations and represent enforcement policy regarding NC OSHA's application of safety and health rules and regulations.

Statutory Authority G.S. 95-136(g).

.1903 TRANSPORTATION OF EXPLOSIVES: PERSONNEL AND BLASTING CAPS

(a) Standards applicable to this interpretation are contained in both 29 CFR 1910 and 29 CFR 1926:

- (1) — 29 CFR 1910.109(b)(1); States General Hazard. No person shall store, handle, or transport explosives or blasting agents when such storage, handling, and transportation of explosives or blasting agents constitutes an undue hazard to life and property.
- (2) — 29 CFR 1910.109(d)(1)(iv). — States blasting caps or electric blasting caps shall not be transported over the highways on the same vehicles with other explosives.
- (3) — 29 CFR 1910.109(d)(2)(i). — States vehicles used for transporting

explosives shall be strong enough to carry the load without difficulty and be in good mechanical condition. If vehicles do not have a closed body, the body shall be covered with a flame proof and moisture proof tarpaulin or other effective protection against moisture and sparks. All vehicles used for the transportation of explosives shall have tight floors and any spark producing metal on the inside of the body shall be covered with wood or other nonsparking materials to prevent contact with packages of explosives. Packages of explosives shall not be loaded above the sides of an open body vehicle.

(4) 29 CFR 1926.902(a). States transportation of explosives shall meet the provisions of the Department of Transportation regulations contained in . . . 49 CFR Parts 171 to 179, Highways and Railways . . .

(5) 29 CFR 1926.902(d). States explosives, blasting agents, and blasting supplies shall not be transported with other materials or cargos. Blasting caps (including electric) shall not be transported in the same vehicle with other explosives.

(6) 29 CFR 1926.902(f). States when explosives are transported by a vehicle with an open body, a class II magazine or original manufacturer's container shall be securely mounted on the bed to contain the cargo.

(7) 29 CFR 1926.902(g). States all vehicles used for the transportation of explosives shall have tight floors and any exposed spark producing metal on the inside of the body shall be covered with wood, or other nonsparking material, to prevent contact with containers of explosives.

(b) Due to apparent conflicts among Occupational Safety and Health, Department of Transportation, and Bureau of Mines regulations concerning explosives and the transportation thereof; inspectors, consultants, employers, and employees have expressed concern and confusion as to what constitutes proper transportation procedures. The authority on this subject, accepted by all agencies involved, is the Institute of Makers of Explosives (IME), the trade association representing the producers of

commercial explosives, blasting agents, supplies, and accessories in the United States, and the agency on whose guidelines most standards are based. The questions most commonly asked are:

(1) Can employees, equipment and explosives be transported on the same vehicle?

(2) Can dynamite and blasting caps be transported together in the same vehicle?

(3) Can dynamite and/or blasting caps be transported in a trailer attached to the rear of a personnel transport truck?

(c) The interpretation utilized by NC-OSHA will be as follows:

(1) As implied in 29 CFR 1910.109(b)(1) and specifically stated in IME Publications Numbers 3 and 4, and in state and federal mine safety regulations only authorized persons qualified in explosives handling and/or blasting operations shall be in or around motor vehicles transporting explosive materials. Also, as implied by 29 CFR 1910.109(b)(1) and stated in 29 CFR 1926.902(d); IME Publications Numbers 3, 4, 5, and 17, state and federal mine safety regulations, and specifically described in Department of Transportation regulations; explosives, blasting caps, and blasting agents shall not be transported with tools, equipment, materials, or other cargos. Tools, equipment, and/or materials of non-hazardous nature may be carried in separate compartments as long as they cannot in any way increase the hazards associated with handling and transporting the explosives, or increase the likelihood of employee injury. No loose cargo shall be permitted in the compartment with the explosives.

(2) 29 CFR 1910.109(d)(1)(iv) and 29 CFR 1926.902(d) prohibit the transportation of electric blasting caps and other explosives on the same vehicle. However, if both items are packed in their original containers, properly labeled, and deposited in approved containers or compartments under IME Safety Library Publication Number 22; then same vehicle transportation is permissible. The location and construction of such containers are described below:

- (A) a portable approved container placed within and readily removable from the cargo-carrying space of the vehicle;
- (B) a container securely attached to the vehicle;
- (C) a compartment built into the cargo space of the vehicle.

Note: The construction of the container or compartment shall be as shown in Appendices C and D, below. For detail construction requirements refer to IME Safety Library Publication 22.

The cab of the vehicle is not acceptable as the "compartment or container" in which the electric caps shall be placed. If an approved magazine is not used for the explosive then the metal surface of the cargo compartment shall be lined with wood, and open body vehicles covered with a fire and moisture resistant tarpaulin or equivalent. Explosives shall not be piled higher than the sides or tailgate of the transporting vehicle.

- (3) Explosives and/or blasting caps shall not be transported on trailers unless the trailer is specifically designed and/or equipped for explosives hauling or storage, including approved type 2 or 3 magazines. Pole trailers are not acceptable for such uses. Situations contrary to these guidelines shall be recommended for citation under 29 CFR 1910.109(b)(1) for general industry and 29 CFR 1926.902(a) for construction.

- (4) Close attention shall be given to strict adherence to all other requirements of 29 CFR 1910.109 and 29 CFR 1926.900 to .914 in explosives operations to insure maximum safety and understanding of potential hazards.

(d) Questions on the content or application of this standards notice should be directed to the safety and health engineering section, office of occupational safety and health, North Carolina Department of Labor. Question regarding special hazards or conditions in explosives operations may be referred to:

Institute of Makers of Explosives
420 Lexington Avenue
New York, New York 10017

Statutory Authority G.S. 95-136(g).

SECTION .2000 - POWER TRANSMISSION AND DISTRIBUTION

.2001 SCOPE

This Section 13 NCAC 7E .2000 contains all the currently effective interpretations of standards contained within Subpart V Power Transmission and Distribution of Part 1926 of Title 29 of the Code of Federal Regulations.

Statutory Authority G.S. 95-136(g).

.2002 APPLICATION AND DISTRIBUTION

All rules filed within this Section are distributed to NC OSHA field personnel, supervisors and staff in the form of standards notices. The rules contained in this Section are official interpretations and represent enforcement policy regarding NC OSHA's application of safety and health rules and regulations.

Statutory Authority G.S. 95-136(g).

SECTION .2100 - ROLLOVER PROTECTIVE STRUCTURES: OVERHEAD PROTECTION

.2101 SCOPE

This Section 13 NCAC 7E .2100 contains all the currently effective interpretations of standards contained within Subpart W Rollover Protective Structures; Overhead Protection of Part 1926 of Title 29 of the Code of Federal Regulations.

Statutory Authority G.S. 95-136(g).

.2102 APPLICATION AND DISTRIBUTION

All rules filed within this Section are distributed to NC OSHA field personnel, supervisors and staff in the form of standards notices. The rules contained in this Section are official interpretations and represent enforcement policy regarding NC OSHA's application of safety and health rules and regulations.

Statutory Authority G.S. 95-136(g).

SUBCHAPTER 7F - STANDARDS

SECTION .0100 - GENERAL INDUSTRY STANDARDS

.0101 GENERAL INDUSTRY

(a) The provisions for the Occupational Safety and Health Standards for General Industry, Title 29 of the Code of Federal Regulations Part 1910, are adopted by reference.

(b) The parts of the Code of Federal Regulations

adopted by reference in this Subchapter shall not automatically include any subsequent amendments thereto.

Statutory Authority G.S. 95-131; 150B-21.6.

SECTION .200 - CONSTRUCTION STANDARDS

.0201 CONSTRUCTION

(a) The provisions for the Occupational Safety and Health Standards for Construction, Title 29 of the Code of Federal Regulations Part 1926, are adopted by reference except that personal protective equipment, §1926.28(a) is amended to read as follows: (a) The employer is responsible for requiring the wearing of appropriate personal protective equipment in all operations where there is an exposure to hazardous conditions or where this part indicates the need for using such equipment to reduce the hazards to the employees.

(b) The parts of the Code of Federal Regulations adopted by reference in this Subchapter shall not automatically include any subsequent amendments thereto.

Statutory Authority G.S. 95-131; 150B-21.6.

SECTION .0300 - AGRICULTURE STANDARDS

.0301 AGRICULTURE

(a) The provisions for the Occupational Safety and Health Standards for Agriculture, Title 29 of the Code of Federal Regulations Part 1928, are adopted by reference except that (1) in Subpart I - General environmental controls - 29 CFR 1928.110 [Field Sanitation], the scope shall not be limited to any specific number of employees.

(b) The parts of the Code of Federal Regulations adopted by reference in this Subchapter shall not automatically include any subsequent amendments thereto.

Statutory Authority G.S. 95-131; 150B-95-21.6.

TITLE 15A - DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNR - Environmental Management Commission intends to amend rules cited as 15A NCAC 2P .0101; .0202; .0401 - .0402;

.0404 - .0405 and .0407.

The proposed effective date of this action is September 1, 1993.

Instructions on How to Demand a Public Hearing (must be requested in writing within 15 days of notice): Any person requesting that the Environmental Management Commission hold a public hearing on these proposed amendments must submit a written request by April 30, 1993. The request must be submitted to David Hance, Division of Environmental Management, Groundwater Section, P.O. Box 29535, Raleigh, NC 27626-0535.

Reason for Proposed Action: The proposed changes to 15A NCAC 2P Rules for the Administration of the Leaking Petroleum Underground Storage Tank Cleanup Funds are necessitated by the passage of Senate Bill 1169 during the 1992 session of the General Assembly. This bill amended the Leaking Petroleum Underground Storage Tank Cleanup Act of 1988 (G.S. 143-215.94A et seq.). The changes allow the Department to reimburse property owners of sites containing commercial underground storage tanks for costs resulting from cleanup of environmental damage following the discovery of a release of petroleum from tanks, provided that no owner or operator is proceeding with the cleanup. The rule changes clarify specific circumstances under which a property owner would be eligible. A rule also provides a definition for "landowner".

Comment Procedures: Written comments should be submitted to David Hance, Division of Environmental Management, Groundwater Section, P.O. Box 29535, Raleigh, NC 27626-0535. Comments will be accepted through May 15, 1993.

CHAPTER 2 - ENVIRONMENTAL MANAGEMENT COMMISSION

SUBCHAPTER 2P - LEAKING PETROLEUM UNDERGROUND STORAGE TANK CLEANUP FUNDS

SECTION .0100 - GENERAL CONSIDERATIONS

.0101 GENERAL

(a) The purpose of this Subchapter is to establish criteria and procedures for the reimbursement of costs incurred by ~~owners~~ owners, ~~and operators,~~ and landowners from the Leaking Petroleum Underground Storage Tank Cleanup Funds.

(b) The Groundwater Section of the Division of Environmental Management of the Department of Environment, Health and Natural Resources shall administer the Commercial and Noncommercial Underground Storage Tank Cleanup Funds for the State of North Carolina.

(c) As authorized by G.S. 143-215.94G, the Department may engage in cleanup work it deems appropriate and pay the costs from the Noncommercial Fund in accordance with G.S. 143-215.94D.

(d) The Department may engage in investigations and cleanups in accordance with the severity of threat to human health and safety and to the environment, and the availability of resources, as determined by the Division.

Statutory Authority: G.S. 143-215.76; 143-215.3; 143-215.94B; 143-215.94D; 143-215.94E; 143-215.94G; 143-215.94L; 143-215.94T; 143B-282.

SECTION .0200 - PROGRAM SCOPE

.0202 DEFINITIONS

(a) The Definitions for "Criteria and Standards Applicable to Underground Storage Tanks" contained in 15A NCAC 2N .0203 are hereby incorporated by reference including subsequent amendments and editions, except that for the purposes of this Subchapter, the definition of "Underground Storage Tank" shall be as defined in Subparagraph (b)(12) of this Rule.

(b) The following terms are defined for use in this Subchapter:

- (1) "Annual operating fee" is an annual fee required to be paid to the Department by the owner or operator of each commercial underground storage tank in use on or after 1 January of the year, beginning with 1989.
- (2) "Commission" means the Environmental Management Commission as organized under Chapter 143B of the General Statutes.
- (3) "Department" means Department of Environment, Health and Natural Resources.
- (4) "Discovered release" means a release

which an owner or operator, or its employee or agent, has been made aware of, has been notified of, or has a reasonable basis for knowing has occurred.

- (5) "Dual usage tank" means an underground storage tank which could be considered both a commercial underground storage tank and a noncommercial underground storage tank and for which both the commercial and the noncommercial usages are integral to the operation or existence of the tank.
- (6) "Household" means a permanent structure, whether free-standing or connected to other units, used primarily for living, where primary living space and primary food preparation facilities are controlled or maintained by the residents. "Household" includes single-family houses, mobile homes, apartments, and single living units, whether or not the residents are related to each other and whether the units are occupied on a year-round or seasonal basis. "Household" does not include dormitories, hospitals, hotels, motels, apartment buildings (as distinct from the individual apartments therein), or other multiple dwelling structures. The term "four or fewer households" shall relate to underground storage tanks serving households only.
- (7) "Landowner" means any record fee owner of real property that contains or contained a commercial underground storage tank of which he does not qualify as an owner or operator pursuant to G.S. 143-215.94A.
- (78) "Occurrence" means one or more release(s) that result(s) in a single plume of soil, surface water, or groundwater contamination (consisting of free product or dissolved contaminants exceeding standards specified in 15A NCAC 2L or any other applicable laws, rules or regulations) originating at a single property.
- (89) "Reasonable and necessary expenditures" means expenditures for the cleanup of environmental damage performed in accordance with applicable environmental laws and

regulations and which are essential in determining the extent of contamination, in conducting release response or remediation, or which compensate third parties for resulting bodily injury and property damage. The Commission shall consider such expenditures reasonable and necessary to the extent that they are sufficiently documented, are performed in an efficient manner considering comparable costs for labor, equipment, and materials, and utilize cost-efficient methods.

- (910) "Substantive law, rule, or regulation" shall mean any law, rule, or regulation requiring an owner or operator to perform any act necessary and essential in preventing discharges or releases, in facilitating their early detection, and in mitigating the impact of discharges or releases.
- (+011) "Tank in operation" means an underground storage tank into which product is added or from which product is removed for purposes other than closure.
- (+112) "Tank in use" means an underground storage tank intended for the containment or dispensing of petroleum product.
- (+213) "Underground storage tank", as used in this Subchapter means any Commercial or Noncommercial Underground Storage Tank as defined in G.S. 143-215.94A. A dual usage tank is considered to be a commercial underground storage tank.

Statutory Authority: G.S. 143-215.3; 143-215.94A; 143-215.94B; 143-215.94C; 143-215.94D; 143-215.94E; 143-215.94L; 143-215.94T; 143B-282.

SECTION .0400 - REIMBURSEMENT PROCEDURE

.0401 ELIGIBILITY OF OWNER OR OPERATOR

- (a) Date of Release.
- (1) An owner or operator or landowner of a commercial underground storage tank is not eligible for reimbursement ~~for~~ of costs from the Commercial Fund related to releases which were

discovered prior to June 30, 1988.

- (2) An owner or operator of a noncommercial underground storage tank is eligible for reimbursement for of costs without regard to the date a release is discovered.
- (3) An owner or operator of a commercial underground storage tank which qualifies for the Noncommercial Fund pursuant to G.S. 143-215.94D(b)(3) and 143-215.94D(b)(4) is eligible for reimbursement of costs without regard to the date a release is discovered.
- (34) An owner or operator or landowner of a commercial underground storage tank, from which a release is discovered on or after July 3, 1991, is not eligible for reimbursement from the Commercial Fund if the tank had been removed from the ground more than 120 days prior to the date of discovery of the release.

(b) An owner or operator of a commercial underground storage tank is not eligible for reimbursement for costs related to releases if any annual operating fees due have not been paid in accordance with Rule .0301 of this Subchapter prior to discovery. A previous owner or operator of a commercial underground storage tank may be eligible for reimbursement of costs for cleanup of a release discovered after he ceases owning or operating the underground storage tank if all fees due during his period of ownership and operation have been paid prior to discovery of the release. A landowner is eligible for reimbursement of costs without regard to the payment of fees.

(c) An owner or operator or landowner of a commercial or noncommercial underground storage tank is not eligible for reimbursement of any expended costs which are in excess of the amount determined reasonable in accordance with Rule .0402, and which are not necessary in performing cleanup of environmental damage and in compensating third parties for bodily injury and property damage, and which are less than any deductible established for the appropriate fund.

(d) An owner or operator or landowner of a commercial or noncommercial underground storage tank may be reimbursed for eligible costs only after submittal of a written application to the Division, on forms provided by the Division, and which includes any information and documentation necessary to determine eligibility and to determine that any expended costs are reasonable and necessary.

(e) An owner or operator of a commercial or noncommercial underground storage tank shall not be eligible for reimbursement for costs related to releases if the owner or operator has willfully violated any substantive law, rule, or regulation applicable to underground storage tanks intended to prevent, mitigate, or facilitate the early detection of discharges or releases.

(f) The release response and corrective action requirements of any rules of the Commission and of any statute administered by the Department shall not in any way be construed as limited by, or contingent upon, any reimbursement from either the Noncommercial Fund or the Commercial Fund.

Statutory Authority: G.S. 143-215.3; 143-215.94B; 143-215.94E; 143-215.94L; 143-215.94N; 143-215.94T; 143B-282.

.0402 CLEANUP COSTS

(a) In determining whether costs expended by an owner or operator or landowner are reasonable and necessary, the Division shall consider the following:

- (1) Adequacy and cost-effectiveness of any work performed and technical activity utilized by the owner or operator or landowner in performing release response, site assessment and corrective action.
 - (2) Typical billing rates of engineering, geological, or other environmental consulting firms providing similar services in the State as determined by the Division.
 - (3) Typical rental rates for any necessary equipment as determined by the Division. The amount reimbursed for equipment rental shall not exceed the typical purchase price of such equipment.
 - (4) Typical costs or rates of any other necessary service, labor or expense as determined by the Division.
- (b) Expenditures not eligible for reimbursement shall include the following:
- (1) Costs of the removal and disposal of noncommercial underground storage tanks and contents removed on or after July 3, 1991, and of commercial underground storage tanks and contents removed on or after January 1, 1992;
 - (2) Costs of the replacement of any underground storage tank, piping, fitting, or

ancillary equipment;

- (3) Costs incurred in preparation of any proposals or bid by a provider of service for the purpose of soliciting or bidding for the opportunity to perform an environmental investigation or clean-up, even if that provider is ultimately selected to provide the service solicited;
- (4) Interest on any accounts, loans, etc.;
- (5) Expenses charged by the owner or operator or landowner in the processing and management of a reimbursement application or subsequent claims;
- (6) Attorney's fees;
- (7) Penalties, fees, and fines assessed by any court or agency;
- (8) Loss of profits, fees, and wages incurred by the owner or operator or landowner;
- (9) Any other expenses not specifically related to environmental cleanup, or implementation of a cost effective environmental cleanup, or third party bodily injury or property damage.

Statutory Authority: G.S. 143-215.3; 143-215.94B; 143-215.94D; 143-215.94E; 143-215.94L; 143-215.94T; 143B-282.

.0404 REQUESTS FOR REIMBURSEMENT

(a) An application for reimbursement must be made on a form provided by the Division. The application form must accompany the initial reimbursement request.

(b) A request for reimbursement shall include copies of any documentation required by the Division to determine that expended costs are reasonable and necessary. Proof of payment must accompany any request for reimbursement, except when reimbursement will be made jointly to the owner or operator or landowner and either a provider of service or a third party claimant. The Division may require the owner or operator or landowner to submit any information required for the purpose of substantiating any claim for reimbursement on forms provided by the Division.

(c) A request for reimbursement may be returned or additional information requested by the Division, if it is found to be incomplete.

(d) The Division shall reimburse an owner or operator or landowner for expenses following completion of any significant phase of cleanup work or in accordance with the schedule allowed by G.S. 143-215.94E(e).

(e) If any amount approved for reimbursement is less than the amount of reimbursement requested, the Division shall issue a written explanation of why the amount requested was not approved.

Statutory Authority: G.S. 143-215.3; 143-215.94B; 143-215.94E; 143-215.94G; 143-215.94L; 143-215.94T; 143B-282.

.0405 METHOD OF REIMBURSEMENT

(a) Reimbursement for cleanup costs shall be made only to an owner or operator or landowner of a petroleum underground storage tank, or jointly to an owner or operator or landowner and a provider of service.

(b) Reimbursement of cleanup costs to the owner or operator or landowner shall be made only after proof of payment for such costs has been received by the Division.

(c) Joint reimbursement of cleanup costs shall be made to an owner or operator or landowner and a provider of service only upon receipt of a written agreement acknowledged by both parties. Any reimbursement check shall be sent directly to the owner or operator or landowner.

(d) Payment of third party claims shall be made to the owner or operator, or jointly to the owner or operator and the third party claimant.

Statutory Authority: G.S. 143-215.3; 143-215.94B; 143-215.94E; 143-215.94L; 143-215.94T; 143B-282.

.0407 FINAL ACTION

(a) The Director, or his delegate, shall make the agency decision on a written application for eligibility for reimbursement from the appropriate fund. The Director, or his delegate, shall make the agency decision on any written request for reimbursement made subsequent to an initial application.

(b) An owner or operator or landowner who has been denied eligibility for reimbursement from the appropriate fund after submittal of a written application in accordance with the procedures of this Subchapter, or who has had any written reimbursement request denied after submittal in accordance with the procedures of this Subchapter, shall be notified of the right to petition for a contested case in the Office of Administrative Hearings in accordance with the procedure set out in G.S. 150B-23. The Secretary of the Department of Environment, Health, and Natural Resources shall make the final agency decision in any contested case pursuant to G.S. 150B-36.

Statutory Authority: G.S. 143-215.3; 143-215.94B; 143-215.94D; 143-215.94E; 143-215.94L; 143-215.94T; 143B-282; 150B-23; 150B-36.

Notice is hereby given in accordance with G.S. 150B-21.2 that the DEHNR - Soil and Water Conservation intends to amend rule cited as 15A NCAC 6C .0417.

The proposed effective date of this action is July 1, 1993.

Instructions on How to Demand a Public Hearing (must be requested in writing within 15 days of notice):

Any person(s) requesting a public hearing on the proposed rule must submit such a request in writing within 15 days after publication of the notice. The request must be submitted to: Glenn Sappie, Economist, P.O. Box 27687, Raleigh, NC 27611-7687. Mailed written request must be postmarked no later than April 30, 1993.

Reason for Proposed Action: To add a prerequisite for disbursement of Small Watershed Grant funds concerning land rights, to allow consideration of the following special circumstances: Time limits on funds beyond the control of the Soil and Water Conservation Commission or a cash flow crisis by the acquiring agency.

Comment Procedures: Interested persons may contact Glenn Sappie at (919) 733-2302 for more information regarding this rule. Written comments will be received for 30 days after publication of the notice. The comments must be submitted to: Glenn Sappie, DSWC, P.O. Box 27687, Raleigh, NC 27611. Mailed written comments must be postmarked no later than May 15, 1993.

Editor's Note: This Rule was filed as a temporary amendment effective April 5, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner.

CHAPTER 6 - SOIL AND WATER CONSERVATION COMMISSION

SUBCHAPTER 6C - SMALL WATERSHED PROGRAM

SECTION .0400 - SMALL
WATERSHED GRANTS

**.0417 PREREQUISITE FOR
DISBURSEMENT OF GRANT FUNDS**

(a) Land Rights. The grant recipient shall acquire all land rights involved in water retarding structure sites (including flood prevention, water supply and/or recreation) and recreation sites prior to disbursement of grant funds: however, the commission has the discretion to approve disbursement in the following situations:

- (1) The acquiring agency has not obtained all land rights, but has options to purchase those remaining, or has initiated eminent domain proceedings and will have funds on hand to complete the land rights acquisitions after disbursement.
- (2) The acquiring agency has reached a written agreement with a utility company or the Department of Transportation concerning the subsequent relocation of a public utility or a state road.
- (3) When grant funds are provided through time-limited reversionary state bonds, and upon evidence satisfactory to the Commission that the grant recipient will cover at least fifty percent of land rights acquisition costs. The Commission may make partial funds available as the grant recipient evidences financial ability to cover land rights acquisition costs at specific phases of development including but not limited to surveying, appraisal and purchase of individual parcels.

(b) Construction and Engineering:

- (1) The commission has the discretion to approve either lump sum or progressive grant disbursement payments for construction and engineering purposes. The commission shall evaluate the applicant's financial needs and other pertinent data to determine the manner of payment. However, the commission shall withhold at least 10 percent of the disbursement to insure satisfactory completion of construction/engineering works.
- (2) Prior to any disbursement for construction, the grant recipient shall certify on Form 004LR that it has acquired all necessary land rights in compliance with all applicable laws, rules, and

regulations. The commission may accept an executed SCS-AS-78 Form in lieu of the commission's own form.

- (3) The commission may withhold any payments of state grant funds pending the completion of any required audits or inspections.

Statutory Authority G.S. 139-4(d); 139-56; 143B-294.

The Rules Review Commission (RRC) objected to the following rules in accordance with G.S. 143B-30.2(c). State agencies are required to respond to RRC as provided in G.S. 143B-30.2(d).

COMMERCE

Banking Commission

4 NCAC 3F .0402 - Required and Permissible Investments RRC Objection 01/21/93
Obj. Cont'd 02/18/93

Savings Institutions Division: Savings Institutions Commission

4 NCAC 16A .0105 - Restrictions: Payment of Dividends & Repurchase of Stock RRC Objection 03/18/93
Agency Revised Rule Obj. Removed 03/18/93
4 NCAC 16G .0311 - Required Provisions in Plan of Conversion RRC Objection 03/18/93
Agency Revised Rule RRC Objection 03/18/93

EDUCATION

Elementary and Secondary

16 NCAC 6G .0301 - Local School Improvement Plans RRC Objection 02/18/93
Agency Revised Rule Obj. Removed 02/18/93

ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Adult Health

15A NCAC 16A .1208 - Use of Program Funds RRC Objection 03/18/93
Agency Revised Rule Obj. Removed 03/18/93

Coastal Management

15A NCAC 7H .0308 - Specific Use Standards for Ocean Hazard Areas RRC Objection 11/19/92
Rule Returned to Agency 12/17/92
RRC Objection 01/21/93
Rule Returned to Agency 02/18/93
Agency Filed Rule for Codification in Code Over RRC Objection Eff. 03/01/93
15A NCAC 7H .1205 - Specific Conditions RRC Objection 03/18/93

Environmental Health

15A NCAC 18A .1948 - Site Classification RRC Objection 03/18/93
Agency Revised Rule Obj. Removed 03/18/93

Environmental Management

15A NCAC 2H .0108 - Fact Sheets RRC Objection 02/18/93
Agency Revised Rule Obj. Removed 02/18/93
15A NCAC 2H .0111 - Meetings and Hearings RRC Objection 02/18/93

<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>02/18/93</i>
<i>15A NCAC 2H .0114 - Modification and Revocation of Permits</i>	<i>RRC Objection</i>	<i>02/18/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>02/18/93</i>
<i>15A NCAC 2H .1103 - Definitions</i>	<i>RRC Objection</i>	<i>02/18/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>03/18/93</i>
<i>15A NCAC 2H .1110 - Implementation</i>	<i>RRC Objection</i>	<i>02/18/93</i>
	<i>Obj. Cont'd</i>	<i>03/18/93</i>

Laboratory Services

<i>15A NCAC 20D .0234 - Criteria & Procedures: Decert./Denial/Downgrading</i>	<i>RRC Objection</i>	<i>03/18/93</i>
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Solid Waste Management

<i>15A NCAC 13A .0013 - The Hazardous Waste Permit Program - Part 270</i>	<i>RRC Objection</i>	<i>03/18/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>03/18/93</i>

Wildlife Resources and Water Safety

<i>15A NCAC 10I .0001 - Definitions</i>	<i>RRC Objection</i>	<i>10/15/92</i>
<i>Agency Responded</i>	<i>Obj. Cont'd</i>	<i>11/19/92</i>
<i>Agency Responded</i>	<i>Obj. Cont'd</i>	<i>12/17/92</i>

HUMAN RESOURCES

Medical Assistance

<i>10 NCAC 26D .0012 - Time Limitation</i>	<i>RRC Objection</i>	<i>12/17/92</i>
<i>Agency Withdrew Rule</i>		<i>12/17/92</i>
<i>10 NCAC 26N .0201 - Offer to Counsel</i>	<i>RRC Objection</i>	<i>12/17/92</i>
<i>Agency Withdrew Rule</i>		<i>12/17/92</i>
<i>10 NCAC 50B .0203 - Application Processing Standards</i>	<i>RRC Objection</i>	<i>03/18/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>03/18/93</i>

INDEPENDENT AGENCIES

N.C. Housing Finance Agency

<i>24 NCAC 1M .0202 - Eligibility</i>	<i>RRC Objection</i>	<i>10/15/92</i>
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>11/19/92</i>
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>12/17/92</i>
<i>24 NCAC 1M .0204 - Selection Procedures</i>	<i>RRC Objection</i>	<i>10/15/92</i>
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>11/19/92</i>
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>12/17/92</i>
<i>24 NCAC 1M .0205 - Administration</i>	<i>RRC Objection</i>	<i>10/15/92</i>
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>11/19/92</i>
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>12/17/92</i>
<i>24 NCAC 1M .0206 - Program Fees</i>	<i>RRC Objection</i>	<i>10/15/92</i>
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>11/19/92</i>
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>12/17/92</i>
<i>24 NCAC 1M .0301 - Goal and Objectives</i>	<i>RRC Objection</i>	<i>10/15/92</i>
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>11/19/92</i>
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>12/17/92</i>
<i>24 NCAC 1M .0302 - Eligibility Requirements</i>	<i>RRC Objection</i>	<i>10/15/92</i>
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>11/19/92</i>

<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>12/17/92</i>
24 NCAC 1M .0303 - Threshold Review Criteria	<i>RRC Objection</i>	<i>10/15/92</i>
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>11/19/92</i>
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>12/17/92</i>
24 NCAC 1M .0306 - Funding Commitment	<i>RRC Objection</i>	<i>10/15/92</i>
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>11/19/92</i>
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>12/17/92</i>
24 NCAC 1M .0401 - Goals and Objectives	<i>RRC Objection</i>	<i>10/15/92</i>
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>11/19/92</i>
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>12/17/92</i>
24 NCAC 1M .0402 - Eligibility Requirements	<i>RRC Objection</i>	<i>10/15/92</i>
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>11/19/92</i>
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>12/17/92</i>
24 NCAC 1M .0403 - Threshold Review Criteria	<i>RRC Objection</i>	<i>10/15/92</i>
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>11/19/92</i>
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>12/17/92</i>
24 NCAC 1M .0404 - Ranking Criteria	<i>RRC Objection</i>	<i>10/15/92</i>
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>11/19/92</i>
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>12/17/92</i>
24 NCAC 1M .0405 - Agency Board Approval	<i>RRC Objection</i>	<i>10/15/92</i>
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>11/19/92</i>
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>12/17/92</i>

INSURANCE

Consumer Services

11 NCAC 4 .0428 - Enforcement	<i>RRC Objection</i>	<i>03/18/93</i>
<i>Agency Revised Rule</i>	<i>RRC Objection</i>	<i>03/18/93</i>

Departmental Rules

11 NCAC 1 .0432 - Manufactured Housing Board Hearings	<i>RRC Objection</i>	<i>12/17/92</i>
<i>Agency Withdrew Rule</i>		<i>12/17/92</i>

Financial Evaluation Division

11 NCAC 11A .0602 - Licensure	<i>RRC Objection</i>	<i>11/19/92</i>
<i>Agency Revised Rule</i>	<i>RRC Objection</i>	<i>11/19/92</i>
<i>Rule Returned to Agency</i>		<i>12/17/92</i>
11 NCAC 11B .0508 - Foreign Company Securities: Verifiable Capital/Surplus	<i>RRC Objection</i>	<i>03/18/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>03/18/93</i>
11 NCAC 11B .0607 - Application - Employers	<i>RRC Objection</i>	<i>03/18/93</i>
11 NCAC 11B .0608 - Deposits: Bonds: Excess Insurance - Employers	<i>RRC Objection</i>	<i>03/18/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>03/18/93</i>
11 NCAC 11B .0610 - Application - Groups	<i>RRC Objection</i>	<i>03/18/93</i>
11 NCAC 11H .0002 - License - Steps	<i>RRC Objection</i>	<i>03/18/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>03/18/93</i>

Multiple Employer Welfare Arrangements

11 NCAC 18 .0019 - Description of Forms	<i>RRC Objection</i>	<i>06/18/92</i>
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Seniors' Health Insurance Information Program

21 NCAC 32H .0901 - Conditions
Agency Revised Rule

RRC Objection 03/18/93
Obj. Removed 03/18/93

Optometry

21 NCAC 42B .0302 - Continuing Education
Agency Revised Rule

RRC Objection 03/18/93
Obj. Removed 03/18/93

21 NCAC 42E .0203 - Consultant: Advisor, Staff Optometrist/Ind Contractor
Agency Revised Rule

RRC Objection 03/18/93
Obj. Removed 03/18/93

21 NCAC 42L .0005 - Written Answers to the Notice of Hearing
Agency Revised Rule

RRC Objection 03/18/93
Obj. Removed 03/18/93

21 NCAC 42M .0006 - Termination
Agency Revised Rule

RRC Objection 03/18/93
Obj. Removed 03/18/93

REVENUE

Individual Income, Inheritance and Gift Tax Division

17 NCAC 3B .0401 - Penalties

RRC Objection 08/20/92

17 NCAC 3B .0402 - Interest

RRC Objection 08/20/92

Individual Income Tax Division

17 NCAC 6B .0107 - Extensions

RRC Objection 08/20/92

17 NCAC 6B .0115 - Additions to Federal Taxable Income

RRC Objection 08/20/92

17 NCAC 6B .0116 - Deductions from Federal Taxable Income

RRC Objection 08/20/92

17 NCAC 6B .0117 - Transitional Adjustments

RRC Objection 08/20/92

17 NCAC 6B .3406 - Refunds

RRC Objection 08/20/92

STATE PERSONNEL

Office of State Personnel

25 NCAC 1D .0511 - Reduction in Force Priority Consideration
Agency Revised Rule

RRC Objection 03/18/93
Obj. Removed 03/18/93

TRANSPORTATION

Highways

19A NCAC 2B .0309 - Source & Purpose-PL (Metropolitan Planning) Funds
Agency Revised Rule

RRC Objection 02/18/93
Obj. Removed 02/18/93

19A NCAC 2B .0312 - Matching-PL (Metropolitan Planning) Funds
Agency Revised Rule

RRC Objection 02/18/93
Obj. Removed 02/18/93

19A NCAC 2E .0201 - Definitions for Outdoor Advertising Control
Agency Revised Rule
Agency Revised Rule

RRC Objection 02/18/93
RRC Objection 02/18/93
Obj. Removed 02/18/93

This Section of the Register lists the recent decisions issued by the North Carolina Supreme Court, Court of Appeals, Superior Court (when available), and the Office of Administrative Hearings which invalidate a rule in the North Carolina Administrative Code.

1 NCAC 5A .0010 - ADMINISTRATIVE PROCEDURES

Thomas R. West, Administrative Law Judge with the Office of Administrative Hearings, declared two portions of Rule 1 NCAC 5A .0010 void as applied in *Stauffer Information Systems, Petitioner v. The North Carolina Department of Community Colleges and The North Carolina Department of Administration, Respondent and The University of Southern California, Intervenor-Respondent* (92 DOA 0666).

10 NCAC 3H .0315(b) - NURSING HOME PATIENT OR RESIDENT RIGHTS

Dolores O. Nesnow, Administrative Law Judge with the Office of Administrative Hearings, declared Rule 10 NCAC 3H .0315(b) void as applied in *Barbara Jones, Petitioner v. North Carolina Department of Human Resources, Division of Facility Services, Licensure Section, Respondent* (92 DHR 1192).

15A NCAC 3O .0201(a)(1)(A) - STDS FOR SHELLFISH BOTTOM & WATER COLUMN LEASES

Julian Mann III, Chief Administrative Law Judge with the Office of Administrative Hearings, declared Rule 15A NCAC 3O .0201(a)(1)(A) void as applied in *William R. Willis, Petitioner v. North Carolina Division of Marine Fisheries, Respondent* (92 EHR 0820).

15A NCAC 19A .0202(d)(10) - CONTROL MEASURES - HIV

Brenda B. Becton, Administrative Law Judge with the Office of Administrative Hearings, declared Rule 15A NCAC 19A .0202(d)(10) void as applied in *ACT-UP TRIANGLE (AIDS Coalition to Unleash Power Triangle), Steven Harris, and John Doe, Petitioners v. Commission for Health Services of the State of North Carolina, Ron Levine, as Assistant Secretary of Health and State Health Director for the Department of Environment, Health, and Natural Resources of the State of North Carolina, William Cobey, as Secretary of the Department of Environment, Health, and Natural Resources of the State of North Carolina, Dr. Rebecca Meriwether, as Chief, Communicable Disease Control Section of the North Carolina Department of Environment, Health, and Natural Resources, Wayne Bobbitt Jr., as Chief of the HIV/STD Control Branch of the North Carolina Department of Environment, Health, and Natural Resources, Respondents* (91 EHR 0818).

This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 733-2698.

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
ALCOHOLIC BEVERAGE CONTROL COMMISSION				
Alcoholic Beverage Control Comm. v. Gary Morgan Neugent	92 ABC 1086	Becton	03/22/93	
Alcoholic Bev. Control Comm. v. Mild & Wild, Inc., Sheila Scholz	93 ABC 1475	Nesnow	03/23/93	
COMMERCE				
Lester Moore v. Weatherization Assistance Program	93 COM 0105	Gray	03/08/93	
CRIME CONTROL AND PUBLIC SAFETY				
Anthony L. Hart v. Victims Compensation Comm.	92 CPS 0937	Chess	03/01/93	
Jennifer Ayers v. Crime Victims Compensation Comm.	92 CPS 1195	Reilly	03/19/93	
Janie L. Howard v. Crime Victims Compensation Comm.	92 CPS 1787	Reilly	03/26/93	
ENVIRONMENT, HEALTH, AND NATURAL RESOURCES				
Charles L. Wilson v. Environment, Health, & Natural Resources	91 EHR 0664	Morgan	03/23/93	
Utley C. Stallings v. Environment, Health, & Natural Resources	92 EHR 0062	Gray	03/15/93	
Safeway Removal, Inc. v. Environment, Health, & Natural Res.	92 EHR 0826	West	03/12/93	8:1 NCR 83
Willie M. Watford v. Hertford Gates District Health Department	92 EHR 1600	Chess	03/24/93	
Angela Power, Albert Power v. Children's Special Health Svcs.	93 EHR 0008	Becton	03/24/93	
Mustafa E. Essa v. Environment, Health, & Natural Resources	93 EHR 0146	Gray	03/29/93	
HUMAN RESOURCES				
O.C. Williams v. Human Resources	91 CSE 0036* ²	Morgan	03/30/93	
O.C. Williams v. Human Resources	91 CSE 1158* ²	Morgan	03/30/93	
William A. Dixon v. Human Resources	91 CSE 1277	Morrison	03/04/93	
Dwayne Allen v. Human Resources	92 CSE 0196	Morgan	03/31/93	
Edwin Ivester v. Human Resources	92 CSE 0268	Nesnow	03/30/93	
Barbara W. Catlett v. Human Resources	92 DCS 0577	West	03/15/93	
Ida Diane Davis v. Human Resources	92 DCS 1200	Gray	03/29/93	
Joyce P. Williams v. Human Resources	92 DHR 1275	Gray	03/15/93	
Eric Stanley Stokes v. Human Resources	92 CSE 1316* ³	Reilly	03/25/93	
Billy Smith v. Human Resources	92 CSE 1629	Reilly	03/25/93	
Anthony Curry v. Human Resources	92 CSE 1631	Reilly	03/25/93	
Larry W. Golden v. Human Resources	92 CSE 1633	Reilly	03/25/93	
Eric Stanley Stokes v. Human Resources	92 CSE 1652* ³	Reilly	03/25/93	
Samuel Benson v. Office of Admin. Hearings for Medicaid	93 DHR 0010	Becton	03/11/93	
JUSTICE				
Marilyn Jean Britt v. Criminal Justice Ed. & Training Stds. Comm.	92 DOJ 1088	Morrison	03/16/93	
Sherri Ferguson Revis v. Sheriffs' Ed. & Training Stds. Comm.	92 DOJ 1756	Gray	03/23/93	
STATE PERSONNEL				
Brenda G. Mitchell v. Correction	91 OSP 0625	West	03/08/93	8:1 NCR 75

* Consolidated cases.

CONTESTED CASE DECISIONS

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
Willie Granville Bailey v. Winston-Salem State University	92 OSP 0285	Morrison	03/10/93	
Laverne B. Hill v. Transportation	92 OSP 0431 ^{*d}	West	03/08/93	
Jimmy D. Wilkins v. Transportation	92 OSP 0432 ^{*d}	West	03/08/93	
Glinda C. Smith v. Wildlife Resources Commission	92 OSP 0653	Morrison	03/12/93	
Willie Thomas Hope v. Transportation	92 OSP 0947	Morgan	03/23/93	
Suzanne Ransley Hill v. Environment, Health, & Nat. Res.	92 OSP 0992	Reilly	03/18/93	8:2 NCR 224
John B. Sauls v. Wake County Health Department	92 OSP 1142	Reilly	03/08/93	8:1 NCR 88
Joseph Henry Bishop v. Environment, Health, & Natural Res.	92 OSP 1243	Reilly	03/05/93	
Brenda K. Campbell v. Employment Security Commission	92 OSP 1505	Morrison	03/17/93	
James B. Price v. Transportation	92 OSP 1657	Mann	03/19/93	
Betty Bradsher v. UNC-CH	92 OSP 1733	Becton	03/30/93	
Jamal Al Bakkat-Morris v. Glenn Sexton (DSS)	92 OSP 1741	Becton	03/24/93	
Brenda Kay Barnes v. Human Resources	92 OSP 1768	Morrison	03/17/93	
Barbara A. Johnson v. Human Resources	93 OSP 0103	Morrison	03/17/93	

TRANSPORTATION

Yates Construction Co., Inc. v. Transportation	92 DOT 1800	Morgan	03/25/93	
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"Information Office;" the building directory listed "Information Office." The secretary continued to perform some of her former duties.

4. As an Information and Communication Specialist II, the petitioner had performed her duties satisfactorily. She had worked closely with the formation and operation of the Governor's Cup and the new bill-fishing tournament. She ran the Saltwater Sports Fishing Tournament, edited a newsletter entitled "Tarheel Coast", wrote feature articles, prepared environmental exhibits and presentations, and provided information to commercial and sports fishing organizations.
5. At the time of the reduction-in-force, Mr. Ward was employed by respondent as a Marine Fisheries Technician III. Mr. Ward is a male whose date of birth is September 26, 1950. His position was a Salary Grade 65 with a salary of \$30,000. Federal funds paid his salary and therefore he was required to devote ninety-five percent of his time to spanish mackerel tagging. However, Mr. Ward was also responsible for creating a liaison with sports fishing organizations. He worked with the Governor's Cup. He performed special assignments for the Director of Marine Fisheries.
6. Although the reduction-in-force affected only women, no EEO/AA impact analysis was performed and no approval of the EEO officer was obtained at the time of the reduction. Several sexually explicit photographs were displayed in the Morehead City office. The Director of the Division was aware of one of the photographs but took no action to remove the photograph from the State office. Only after a call to Raleigh complaining about the photographs were they removed. The petitioner's male supervisor once referred to her as an "ungrateful bitch." Only seven of eighty-four professional positions in the Division of Marine Fisheries are occupied by women.
7. Although placed in the Clerk Typist III position after the reduction-in-force, the petitioner continued applying for available positions in order to return to her former grade and salary. She notified the Director of the Division that she wished to exercise her priority reemployment rights. The 12 month period for exercising her rights had not expired. There was no written agreement for an understudy for any of the positions. She applied for and was qualified by training and experience for an available position of Clerk IV. She could have satisfactorily performed the duties of the position within a reasonable length of time. The position was a Salary Grade 59. A woman was hired for that position. She applied for the available position of Marine Fisheries Technician II, but she was not qualified for the position. She did not have the opportunity to apply for the position of Information and Communication Specialist II because it was created and therefore available but immediately filled by Mr. Ward on July 1, 1992. The position's Salary Grade was 65 and Mr. Ward's salary was \$30,696. The petitioner was qualified for this position because eighty to eighty-five percent of the duties were the same as the duties in her former position which was abolished on July 17, 1991. On the other hand, Mr. Ward had performed only five percent of the duties of the new position in his former position of Marine Fisheries Technician III. Ninety-five percent of Mr. Ward's duties in his former position (spanish mackerel tagging) were being performed by the person in the new Marine Fisheries Technician II position. Once, there was a Technician III position; then, there was a Technician II position and a Specialist II position.

CONCLUSIONS OF LAW

1. The petitioner was denied priority reemployment as required by GS 126-7.1(c1) when she was not selected for the position of Clerk Typist IV and the new position of Information and Communication Specialist II. She satisfied the qualifications for these two positions. What our Supreme Court stated in Department of Correction v. Hill, 313 NC 481, 329 SE2d 377 (1985) concerning a similar priority reemployment statute (GS 126-5(e)) is equally applicable to GS 126-7.1(c1). There, the statute provided that "such employee shall have priority to any position that becomes available for which the employee is qualified;" here, the statute provides that "(i)f a State employee . . . is determined qualified for that position, then within the separating agency the State employee shall receive priority consideration over other applicants. . . ." The Hill Court held that "if the employee is qualified for a job in state government which is available, he must be offered this job before it can be filled by

anyone else, by promotion or otherwise." (*Id.* at 486, 380) This conclusion is equally applicable to the petitioner under GS 126-7.1(c1). She was qualified for both positions. The respondent was required to offer the positions to the petitioner. Finally, the Information and Communication Specialist II position, as in Hill, was a newly created position. If the eye isn't quick enough, the law will not be enforced.

2. Reallocation is the assignment of a position to a different classification. 25 NCAC 1D.0608. Mr. Ward's Marine Fisheries Technician III position was reallocated to a Marine Fisheries Technician II position. The ninety-five percent spanish mackerel tagging, not the five percent sports fisheries work, was the leveling factor. The spanish mackerel tagging was also the reason the position was created by federal funds. A new Information and Communication Specialist II position was created.

3. The petitioner has established a prima facie case of sex and age discrimination in the respondent's failure to offer her the new position of Information and Communication Specialist II. The petitioner expressed her interest in exercising her priority reemployment rights to the respondent. The 12 month period for exercising her rights had not expired. The new position was essentially the same as her former position. The respondent did not allow applications for the new position. Under the facts of this case, the petitioner did apply for the new position. The petitioner was qualified for the position. The petitioner was not offered the position. The petitioner was a member of a protected class with respect to sex and age. The person offered the position, Mr. Ward, was a male nine years younger than the petitioner. The respondent offered evidence showing a legitimate non-discriminatory reason for hiring Mr. Ward, i.e. Mr. Ward had been doing sports fisheries work. The petitioner established that this reason was a mere pretext for sex discrimination. The respondent intentionally discriminated against the petitioner on the basis of sex, but not on the basis of age, in not hiring her for the position of Information and Communication Specialist II.

RECOMMENDED DECISION

It is therefore recommended that the respondent place the petitioner in the next available position of Information and Communication Specialist II position with back and front pay and all benefits until she is placed in the position. It is further recommended that the petitioner be awarded reasonable attorney's fees.

ORDER

It is hereby ORDERED that the agency serve a copy of the Final Decision on the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, N.C. 27611-7447, in accordance with North Carolina General Statutes 150B-36(b).

NOTICE

The final decision in this contested case shall be made by the State Personnel Commission. Each party has the right to file exceptions to the recommended decision and to present written arguments on the decision to this agency.

The agency is required by GS 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings.

This the 18th day of March, 1993.

Robert Roosevelt Reilly, Jr.
Administrative Law Judge

The North Carolina Administrative Code (NCAC) has four major subdivisions of rules. Two of these, titles and chapters, are mandatory. The major subdivision of the NCAC is the title. Each major department in the North Carolina executive branch of government has been assigned a title number. Titles are further broken down into chapters which shall be numerical in order. The other two, subchapters and sections are optional subdivisions to be used by agencies when appropriate.

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3	Auditor	Barber Examiners	6
4	Economic & Community Development	Certified Public Accountant Examiners	8
5	Correction	Chiropractic Examiners	10
6	Council of State	General Contractors	12
7	Cultural Resources	Cosmetic Art Examiners	14
8	Elections	Dental Examiners	16
9	Governor	Dietetics/Nutrition	17
10	Human Resources	Electrical Contractors	18
11	Insurance	Electrolysis	19
12	Justice	Foresters	20
13	Labor	Geologists	21
14A	Crime Control & Public Safety	Hearing Aid Dealers and Fitters	22
15A	Environment, Health, and Natural Resources	Landscape Architects	26
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16	Public Education	Marital and Family Therapy	31
17	Revenue	Medical Examiners	32
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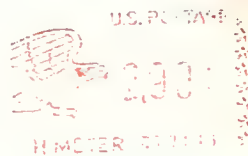
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